Annual Report of

The Ombudsman

Hong Kong

2007



19th Issue • June 2007

OFFICE OF THE OMBUDSMAN, HONG KONG

Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

香港申訴專員用箋

THE OMBUDSMAN, HONG KONG

OUR REF:

DATE: **13 June 2007**

The Honourable Donald Tsang, GBM
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

Dear Sir,

Pursuant to Section 3(4) of Schedule 1A to The Ombudsman Ordinance, I have the honour of submitting my report on the exercise of the function of The Ombudsman in the year April 2006 to March 2007. This includes a statement of accounts and the auditor's report on the statement.

Yours faithfully,

(Alice Tai)
The Ombudsman

Encl.

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THE OMBUDSMAN



FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST MARCH 2007

INDEPENDENT AUDITOR'S REPORT TO THE OMBUDSMAN

(established in Hong Kong pursuant to The Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 15, which comprise the balance sheet as at 31st March 2007, and the statement of income and expenditure, statement of changes in funds and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation and the true and fair presentation of these financial statements in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants. This responsibility includes designing, implementing and maintaining internal controls relevant to the preparation and the true and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit and to report our opinion solely to you in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

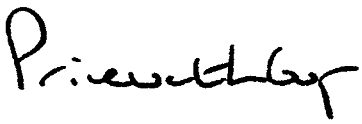
We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and true and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31st March 2007 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.



PricewaterhouseCoopers
Certified Public Accountants

Hong Kong, 18th May 2007

THE OMBUDSMAN
(All amounts in Hong Kong dollars unless otherwise stated)

BALANCE SHEET

	Note	As at 31st March 2007	As at 31st March 2006
ASSETS			
Non-current assets			
Property, plant and equipment	5	22,069,333	22,532,965
Prepaid operating lease	4	67,807,736	69,201,956
		89,877,069	91,734,921
Current assets			
Deposits and prepayments		613,828	718,450
Interest receivable		3,774,541	1,419,111
Cash at banks and in hand	6	198,139,844	167,189,175
		202,528,213	169,326,736
Total assets		292,405,282	261,061,657
FUNDS			
Accumulated funds		196,214,224	160,572,157
LIABILITIES			
Non-current liabilities			
Contract gratuity payable - non-current		2,380,059	3,078,676
Government subventions - non-current	7	85,768,433	88,526,548
		88,148,492	91,605,224
Current liabilities			
Other payables and accruals		1,295,553	1,183,782
Contract gratuity payable - current		3,777,885	4,774,294
Government subventions - current	7	2,969,128	2,926,200
		8,042,566	8,884,276
Total liabilities		96,191,058	100,489,500
Total funds and liabilities		292,405,282	261,061,657

The Ombudsman

The notes on pages 7 to 15 are an integral part of these financial statements.

(All amounts in Hong Kong dollars unless otherwise stated)

STATEMENT OF INCOME AND EXPENDITURE

	Note	Year ended 31st March 2007	2006
Income			
Government subventions		81,368,258	81,315,309
Amortisation of Government subventions		3,103,587	2,926,200
Interest income on bank deposits		8,987,647	5,746,979
Other income		3,051	8,016
		93,462,543	89,996,504
Expenditure			
Operating expenses	8	(57,820,476)	(53,536,612)
Surplus for the year		35,642,067	36,459,892

The notes on pages 7 to 15 are an integral part of these financial statements.

THE OMBUDSMAN
(All amounts in Hong Kong dollars unless otherwise stated)

STATEMENT OF CHANGES IN FUNDS

	Year ended 31 March	
	2007	2006
Total funds as at 1st April	160,572,157	124,112,265
Surplus for the year	35,642,067	36,459,892
Total funds as at 31st March	196,214,224	160,572,157

The notes on pages 7 to 15 are an integral part of these financial statements.

CASH FLOW STATEMENT

	Note	Year ended 31 March 2007	2006
Cash flows from operating activities			
Net cash generated from operating activities	12	25,299,883	33,766,557
Cash flows from investing activities			
Interest received		6,632,217	4,471,442
Purchase of property, plant and equipment	5	(981,431)	(307,836)
Increase in bank deposits with original maturity over 3 months		(51,745,484)	(141,168,516)
Net cash used in investing activities		(46,094,698)	(137,004,910)
Decrease in cash and cash equivalents		(20,794,815)	(103,238,353)
Cash and cash equivalents at beginning of the year		26,020,659	129,259,012
Cash and cash equivalents at end of the year		5,225,844	26,020,659
Analysis of balances of cash and cash equivalents:			
Bank balances and cash		198,139,844	167,189,175
Less: Bank deposits with original maturity over 3 months		(192,914,000)	(141,168,516)
		5,225,844	26,020,659

The notes on pages 7 to 15 are an integral part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS

1 General information

The Ombudsman was established as a corporation sole by statute on 19th December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

These financial statements are presented in Hong Kong dollars unless otherwise stated. These financial statements have been approved for issue by The Ombudsman on 18th May 2007.

2 Summary of significant accounting policies

The principal accounting policies adopted inthe preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

2.1 Basis of preparation

The financial statements have been prepared in accordance with Hong Kong Financial Reporting Standards ("HKFRS") and under the historical cost convention.

The preparation of financial statements in conformity with HKFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying The Ombudsman's accounting policies. There is no area involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements.

Standard and amendment to an existing standard that are not yet effective and have not been early adopted by The Ombudsman

The following standard and amendment have been published that are relevant and mandatory for The Ombudsman's accounting period commencing from 1st April 2007 but which The Ombudsman has not early adopted:

HKFRS 7, Financial instruments: Disclosures, and the complementary Amendment to Hong Kong Accounting Standard ("HKAS") 1, Presentation of Financial Statements - Capital Disclosures

HKFRS 7 introduces new disclosures to improve the information about financial instruments. It requires the disclosure of qualitative and quantitative information about exposure to risks arising from financial instruments, including specified minimum disclosures about credit risk, liquidity risk and market risk, including sensitivity analysis to market risk. The amendment to HKAS 1 introduces disclosures about the level of an entity's capital and how it manages capital. The Ombudsman has assessed the impact of HKFRS 7 and the amendment to HKAS 1 and concluded that there is no significant impact on the financial statements other than certain additional disclosures.

2 Summary of significant accounting policies (Continued)

2.2 Foreign currency translation

(a) Functional and presentation currency

Items included in the financial statements of The Ombudsman are measured using the currency of the primary economic environment in which The Ombudsman operates ('the functional currency"). The financial statements are presented in Hong Kong dollars, which is the Ombudsman's functional and presentation currency.

(b) Transactions and balances

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the statement of income and expenditure.

2.3 Property, plant and equipment

Property, plant and equipment are stated at historical cost less depreciation and impairment losses. Historical cost includes expenditure that is directly attributable to the acquisition of the items.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to The Ombudsman and the cost of the item can be measured reliably. All other repairs and maintenance are charged in the statement of income and expenditure during the financial period in which they are incurred.

Depreciation of leasehold improvements is calculated to write off their costs less accumulated impairment losses over the unexpired periods of the leases or their expected useful lives to The Ombudsman, whichever is shorter.

Depreciation of property, plant and equipment is calculated using the straight-line method to allocate their costs to their residual values over their estimated useful lives, as follows:

– Building	40 years
– Office equipment	5 years
– Office furniture	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount (Note 2.4).

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognised in the statement of income and expenditure.

2 Summary of significant accounting policies (Continued)

2.4 Impairment of non-financial assets

Assets that are subject to amortisation or depreciation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs to sell and value in use. For the purposes of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash-generating units). Assets that suffered an impairment are reviewed for possible reversal of the impairment at each reporting date.

2.5 Other receivables

Other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment. A provision for impairment of trade and other receivables is established when there is objective evidence that The Ombudsman will not be able to collect all amounts due according to the original terms of receivables. The amount of the provision is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the effective interest rate. The amount of the provision is recognised in the statement of income and expenditure.

2.6 Cash and cash equivalents

Cash and cash equivalents include cash in hand and deposits held with banks with original maturities of three months or less.

2.7 Employee benefits

(a) Employee leave and gratuity entitlements

Employee entitlements to annual leave and gratuities are recognised when they accrue to employees. A provision is made for the estimated liability for annual leave and gratuities as a result of services rendered by employees up to the balance sheet date.

Employee entitlements to sick leave and maternity or paternity leave are not recognised until the time of leave.

(b) Pension obligations

The Ombudsman has established a mandatory provident fund scheme ("MPF Scheme") in Hong Kong. The assets of the MPF Scheme are held in separate trustee-administered funds. The Ombudsman has no further payment obligations once the contributions have been paid. The contributions are recognised as employee benefit expense when they are due. Prepaid contributions are recognised as an asset to the extent that a cash refund or a reduction in the future payments is available.

2 Summary of significant accounting policies (Continued)

2.8 Provisions

Provisions are recognised when The Ombudsman has a present legal or constructive obligation where, as a result of past events, it is probable that an outflow of resources will be required to settle the obligation, and the amount has been reliably estimated. Provisions are not recognised for future operating losses.

Where there are a number of similar obligations, the likelihood that an outflow will be required in settlement is determined by considering the class of obligations as a whole. A provision is recognised even if the likelihood of an outflow with respect to any one item included in the same class of obligations may be small.

2.9 Government grants

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and The Ombudsman will comply with all attached conditions.

Government grants relating to costs are deferred and recognised in the statement of income and expenditure over the period necessary to match them with the costs that they are intended to compensate.

Government grants relating to property, plant and equipment are included in non-current liabilities as deferred government subventions and are credited to the statement of income and expenditure on a straight-line basis over the expected lives of the related assets.

2.10 Income recognition

(a) Government subventions

Government subventions are accounted for on an accruals basis in accordance with note 2.9.

(b) Interest income

Interest income is recognised on a time-proportion basis using the effective interest method.

(c) Other income

Other income is recognised on an accruals basis.

NOTES TO THE FINANCIAL STATEMENTS

2 Summary of significant accounting policies (Continued)

2.11 Operating leases (as the lessee)

Leases in which a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases. Payments made under operating leases (net of any incentives received from the lessor) are charged to the statement of income and expenditure on a straight-line basis over the period of the lease.

The cost of acquiring leasehold land is accounted for as prepaid operating lease and is amortised on a straight-line basis over the period of the lease.

3 Financial risk management

Risk management is carried out by the accounting division under policies approved by The Ombudsman. The accounting division identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's activities do not expose it to foreign exchange risk, credit risk and liquidity risk. For interest-rate risk, except for the short term bank deposits which bear interest at fixed rates as set out in note 6 below, The Ombudsman has no other significant interest-bearing assets and liabilities. Accordingly, The Ombudsman's income and operating cash flows are substantially independent of changes in market interest rates.

4 Prepaid operating leases

The Ombudsman's interests in leasehold land represent prepaid operating lease payments and their net book values are analysed as follows:

	2007	2006
In Hong Kong held on:		
Leases of over 50 years	67,807,736	69,201,956

5 Property, plant and equipment

	Building	Leasehold improvements	Office Furniture	Office equipment	Computer equipment	Motor vehicle	Total
At 1st April 2005							
Cost	16,800,000	11,119,800	1	1	1	1	27,919,804
Accumulated depreciation	(1,282,438)	(2,854,590)	-	-	-	-	(4,137,028)
Net book amount	15,517,562	8,265,210	1	1	1	1	23,782,776
Year ended 31st March 2006							
Opening net book amount	15,517,562	8,265,210	1	1	1	1	23,782,776
Additions	-	40,880	4,460	160,650	101,846	-	307,836
Depreciation	(420,000)	(1,114,936)	(42)	(10,605)	(12,064)	-	(1,557,647)
Closing net book amount	15,097,562	7,191,154	4,419	150,046	89,783	1	22,532,965
At 31st March 2006							
Cost	16,800,000	11,160,680	4,461	160,651	101,847	1	28,227,640
Accumulated depreciation	(1,702,438)	(3,969,526)	(42)	(10,605)	(12,064)	-	(5,694,675)
Net book amount	15,097,562	7,191,154	4,419	150,046	89,783	1	22,532,965
Year ended 31st March 2007							
Opening net book amount	15,097,562	7,191,154	4,419	150,046	89,783	1	22,532,965
Additions	-	-	6,910	20,666	953,855	-	981,431
Price adjustment (Note)	-	388,400	-	-	-	-	388,400
Depreciation	(420,000)	(1,293,455)	(1,358)	(33,818)	(84,832)	-	(1,833,463)
Closing net book amount	14,677,562	6,286,099	9,971	136,894	958,806	1	22,069,333
At 31st March 2007							
Cost	16,800,000	11,549,080	11,371	181,317	1,055,702	1	29,597,471
Accumulated depreciation	(2,122,438)	(5,262,981)	(1,400)	(44,423)	(96,896)	-	(7,528,138)
Net book amount	14,677,562	6,286,099	9,971	136,894	958,806	1	22,069,333

Note:
During the year, the costs incurred for leasehold improvements were finalised between the supplier and the Government. Accordingly, The Ombudsman, by reference to the costs finalised by the Architectural Services Department of Government, has made a price adjustment to reflect revised costs.

NOTES TO THE FINANCIAL STATEMENTS

6 Cash at banks and in hand

	2007	2006
Cash at bank and in hand	5,225,844	2,380,659
Bank deposits with original maturity less than 3 months	-	23,640,000
Cash and cash equivalents	5,225,844	26,020,659
Bank deposits with original maturity over 3 months	192,914,000	141,168,516
	198,139,844	167,189,175

The average effective interest rate on bank deposits is 4.5% (2006: 4.3%); these deposits have an average maturity of 12 months (2006: 6 months).

7 Government subventions

The amounts represent the funds granted by Government for prepaid operating lease payments, the purchase of buildings and certain leasehold improvements. Subvention income is recognised on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

	2007	2006
Government subventions	88,737,561	91,452,748
Current portion of government subventions	(2,969,128)	(2,926,200)
	85,768,433	88,526,548

8 Operating expenses

	2007	2006
Auditor's remuneration	41,000	40,000
Amortisation of prepaid operating lease	1,394,220	1,394,220
Depreciation of property, plant and equipment	1,833,463	1,557,647
Employee benefit expense (Note 9)	46,614,281	43,814,019
Announcement of public interest expense	3,005,195	2,059,651
Operating lease rentals in respect of parking spaces	91,200	104,000
Rates and management fee	1,842,937	1,722,937
Other expenses	2,998,180	2,844,138
Total	57,820,476	53,536,612

9 Employee benefit expense

	2007	2006
Salaries and allowances	40,324,764	38,026,840
Contract gratuity	4,568,018	4,279,366
Pension costs - MPF scheme	870,589	841,420
Unutilised annual leave	179,210	64,341
Other employee benefit expenses	671,700	602,052
	46,614,281	43,814,019

10 Key management compensation

	2007	2006
Short-term employee benefits	9,917,207	9,656,018
Post-employment benefits	1,450,670	1,445,709
	11,367,877	11,101,727

11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

12 Net cash generated from operating activities

	2007	2006
Surplus for the year	35,642,067	36,459,892
Adjustments for:		
- Interest income	(8,987,647)	(5,746,979)
- Depreciation of property, plant and equipment	1,833,463	1,557,647
- Amortisation of prepaid operating lease	1,394,220	1,394,220
- Amortisation of Government subventions	(3,103,587)	(2,926,200)
Changes in working capital:		
- Deposits and prepayments	104,622	513,983
- Other payables and accruals	111,771	117,331
- Contract gratuity payable	(1,695,026)	2,396,663
Net cash generated from operating activities	25,299,883	33,766,557

13 Commitments under operating leases

At 31st March, The Ombudsman had future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces as follows:

	2007	2006
No later than one year	7,600	7,600

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History in Brief

Date	Event
1988	
20 July	The Commissioner for Administrative Complaints (COMAC) Bill was passed by the Legislative Council (LegCo)
1989	
1 February	The COMAC Ordinance was enacted First Commissioner Mr. Arthur Garcia, JP assumed office
1 March	The Office of COMAC became operational with staff seconded from Government
15 November	COMAC became a member of the International Ombudsman Institute
1993	
21 July	Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo
1994	
1 February	Second Commissioner Mr. Andrew So, JP assumed office
24 June	The COMAC Ordinance was amended : • to enable the public to lodge complaints directly, instead of by referral from LegCo Members • to extend the jurisdiction to some major statutory bodies • to empower the Commissioner to publish anonymised investigation reports • to empower the Commissioner to initiate direct investigation
30 June	Advisers were appointed to provide expert advice and professional opinion
1 July	Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」

History in Brief

Date	Event
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium
1996	
1 March	Non-official Justices of the Peace (JPs) were enlisted in a JPs Assistance Scheme
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association and became a founding member
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute
27 December	English titles were changed to "The Ombudsman" and "Office of The Ombudsman"
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary to the Asian Ombudsman Association
1999	
1 April	Third Ombudsman Ms Alice Tai, JP assumed office
22 July	The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

History in Brief

Date	Event
2000	
27 July	The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally
2 November	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute
2001	
28 March	Telephone complaint service was introduced
19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation : • to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to adopt systems and processes separate from Government
2002	
6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
16 October	The Ombudsman was elected Secretary to the International Ombudsman Institute
2003	
November	Training in mediation was provided for public officers to promote such service among public organisations
2004	
1 April	Ms Alice Tai, JP, started her second term (2004 - 2009) as The Ombudsman
10 September	The Ombudsman was re-elected as the Secretary of the International Ombudsman Institute
13 December	With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

History in Brief

Date	Event
2005	
24 October	A "Memorandum of Administrative Arrangements" was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office
28 November - 1 December	The Ombudsman hosted the 9th Asian Ombudsman Association Conference

The Ombudsman's Review

June 2007



This has been a year of challenges.

Our new strategy of sustaining publicity over a few months has raised public awareness of our services and pushed complaints received to a record high. Given our performance pledges and ever-rising public expectations, coping with such a caseload was no mean task. Thanks to the dedication and diligence of my staff, we managed to complete 5,340 cases with over 97% to target.

Meanwhile, there were some few cases where the responsible authorities, and at times even public officers, kick against our investigation findings while accepting our recommendations for improvement to systems, procedures and practices.

Understandably, no one likes to be criticised. I do not set out to do so. Nevertheless, The Ombudsman has a public duty to establish the facts of a case and is expected to operate fairly, without fear or favour in the public interest. To this end, my staff and I are at pains to be reasonable and realistic, conscientious and constructive in our comments and conclusions.

In a free and open society like ours, it is perfectly legitimate for the authorities concerned to scrutinise The Ombudsman's investigation findings and to comment on our views. Indeed, we expect no less. However, my concern is that we should be speaking on the same plane and avoid clouding the issues, particularly in making public statements. Otherwise, the community would be confused and worse, the credibility of all concerned might well suffer.

Lately, we have had feedback from a few public officers that we seem to refer even "minor" complaints to them for inquiries, thus adding to their already heavy workload. My response to them is, quite simply, this:

- that without bothering the organisations concerned, we complete a good many cases where the matter is simple, the information readily available or maladministration clearly absent in the case; but
- that where there is *prima facie* evidence of maladministration, whether major or relatively minor, my Office has a duty to process the case and ascertain the facts; and
- that our referral of such cases offers the organisations concerned the opportunity to put their case in perspective.

The Ombudsman's Review

Let me assure public organisations and their staff that we see our role as impartial adjudicator, not advocate for any particular party. We aim to promote a positive culture for complaints, not just with those in the public sector but also among prospective complainants in our community. Where complainants are found to be unreasonable or irresponsible, selfish or dishonest, we do not hesitate to criticise suitably.

In this context, I urge public officers to view complaints as opportunities for review and, where appropriate, revision for service improvement and enhancement. At the very least, complaints are an index of community concern.

In my last report, I mentioned our jurisdictional review and am pleased to say that Part One has been completed and presented to the Administration for consideration. We have re-examined the criteria for including public bodies in my purview and recommended some additions. We have revisited the legislative intent for some of the restrictions on my investigative powers. Part Two of our jurisdictional review, still in progress, is devoted to surveying developments in ombudsmanship worldwide and the implications those could have on the ombudsman system in Hong Kong.

Finally, a word on accountability: The Ombudsman Ordinance empowers me to investigate any action taken by or **on behalf of** a Government department or scheduled body. I have regularly reminded organisations under complaint that we hold them accountable for the action of their agents and contractors. While these are not on The Ombudsman's Schedule, we do closely examine their action as an agent acting for the organisations concerned. An organisation can outsource their work but not their duty to the public.

Chapter 1 Functions and Jurisdiction

1.1 As a statutory body established by The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, the Office of The Ombudsman is dedicated to monitoring and improving public administration in Hong Kong. With legislative amendment in 2001, our Office formally severed links with Government systems and devised our own separate procedures and practices, for total independence and impartiality.

1.2 Although appointed by the Chief Executive of the Hong Kong Special Administrative Region, The Ombudsman is not a servant or agent of Government. Empowered to act in accordance with her own discretion, The Ombudsman's decision is final in respect of actions taken in pursuance of The Ombudsman Ordinance. However, her decisions are subject to scrutiny by the Courts through judicial review.

Objectives

1.3 Our Office strives:

- to seek out the facts for justice and remedy; and
- to improve the quality and efficiency of public administration.

Jurisdiction and Functions

1.4 The Ombudsman investigates complaints of maladministration against Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). With the addition of the newly established Financial Reporting Council, there are now 18 public bodies within our purview.

1.5 Even in the absence of complaints, The Ombudsman may initiate direct investigation into issues of community concern and areas of maladministration where any person may have sustained injustice.

1.6 "Maladministration" is defined in the Ordinance (see **Annex 2**).

1.7 The Hong Kong Police Force, the Independent Commission Against Corruption and a few other organisations in Part II of Schedule 1 are not subject to our investigation. Nevertheless, The Ombudsman is specifically empowered by section 7(1)(b) of the Ordinance to investigate their action if not in compliance with the Code on Access to Information[1].

Actions Not for Investigation

1.8 The Ombudsman's purview is not without prohibitions. Section 8, read with Schedule 2, of the Ordinance specifies actions not subject to The Ombudsman's investigation. Notable examples include legal proceedings or decisions for prosecution, contractual and other commercial transactions, personnel matters and conditions of land grant. A full list of such prohibitions is at **Annex 3**.

1.9 Policy matters and professional judgments are also outside The Ombudsman's jurisdiction as they are not administrative acts *per se*. However, as these matters are often subjects of complaint, The Ombudsman would examine them carefully for any administrative aspects that may come within her jurisdiction. These include work processes, procedures and practices in the execution of policies and the exercise of discretion.

[1] The Code was introduced in 1995 to make available as much Government-held information as possible to the public, unless there are valid reasons - related to public, private or commercial interests - to withhold it.

Restrictions

1.10 Section 10(1) prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, not being the person aggrieved or a suitable representative. Such restrictions are detailed at **Annex 4**.

1.11 Nevertheless, in some cases, The Ombudsman may exercise discretion whether or not to conduct, or to discontinue, an investigation into a complaint. A complaint may be taken up, for instance, if the complainant is able to explain why he or she could not have lodged the complaint within two years.

1.12 Furthermore, The Ombudsman may decide not to investigate a complaint under certain circumstances, say, if previous investigation of similar complaints has revealed no maladministration. Other such circumstances are prescribed in section 10(2) of the Ordinance (see **Annex 5**).

1.13 If The Ombudsman decides not to undertake or continue investigation into a complaint, she will explain why to the complainant.

Complaint Handling

Mode of Complaint

2.1 Complaints may be lodged by letter or on our complaint form available from our Office and our homepage, by post or by fax. We also accept complaints via email, but unless they are digitally signed under proper electronic certification, we will have to respond by post to ensure security of information and to guard against unintended disclosure.

2.2 Members of the public are welcome to visit our Office to make enquiries or lodge complaints. Complainants are received by our duty officers. Where they have difficulties in writing up their own cases, duty officers will take down details for their subsequent verification.

2.3 For simple initial cases, complaints may also be made by telephone. The conversation is recorded on tape and then written up for verification with the complainant by post. To avoid overloading the telephone lines, such complaints are limited to those that can be verbalised within 15 minutes and involve not more than two organisations or much documentary evidence.

2.4 Complainants must always give their name and address as the law requires that they be identifiable and traceable (see **Annex 4**).

Assessment

2.5 Our Assessment Team vets all incoming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Where The Ombudsman decides not to pursue a case, we aim to notify the complainant within 15 working days, (see **para. 1.10** of **Chapter 1** and **para. 2.4** above and **Annex 6** for our performance pledges). Where possible, we advise where and how they may seek assistance or redress. For complaints "screened out" because the complainants are anonymous or unidentifiable, we do not simply discard them but examine them for any pattern of systemic or systematic maladministration. This may at times prompt topics for direct investigation (see **para. 2.17**).

2.6 Complaints "screened in" by the Assessment Team are further scrutinised by one of four investigation teams. Each team, headed by a Chief Investigation Officer working to one of the two Assistant Ombudsmen, handles cases on a number of Government departments and public bodies.

Preliminary Inquiries

2.7 We conduct preliminary inquiries under section 11A of the Ordinance to determine whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or may take the form of Rendering Assistance/Clarification ("RAC"), as outlined in **Fig. 2.1** below.

2.8 Preliminary inquiries are undertaken normally for cases of less complexity. Such inquiries generally take less time as they are not subject to the statutory formalities of full investigation. Where appropriate, we will suggest measures for improvement or remedy and monitor their implementation, as with a full investigation.

Mediation

2.9 With the consent of both the complainant and the organisation concerned, The Ombudsman may try to settle cases by mediation under section 11B of the Ordinance. This alternative dispute resolution method is suitable for complaints that involve only minor or no maladministration. The two parties meet to explore a mutually acceptable solution to the matter under complaint. Our trained investigators act as objective mediators.

2.10 If mediation cannot resolve matters, our Office may initiate preliminary inquiries or a full investigation. In such event, another investigator will be assigned to handle the case afresh. The aim is to ensure impartiality as well as confidentiality of the information provided by the parties during mediation.

Full Investigation

2.11 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

Fig. 2.1

Preliminary Inquiries

Type	Method
INCH	With the complainant's consent, a simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request the organisation to provide specific information, monitors progress and scrutinises the reply, intervening where it is not satisfactory. In the latter event, we may take up the case by RAC or full investigation.
RAC	Our Office collects key facts relating to a case. If the facts fully explain the matter under complaint, we will present the findings with observations to the complainant and, where appropriate, put suggestions to the organisation concerned for remedial action and improvement measures. If further inquiries are warranted, a full investigation may be conducted.

2.12 This involves extensive and intensive probing for evidence. Under section 13, The Ombudsman may summon any person for examination or require such person to furnish information and produce any document or object in his possession or under his control. She may also make site inspections (section 20). At times, we consult members of our Panel of Professional Advisers appointed under section 6A of the Ordinance. Advisers are all experts with good standing in the legal, medical or engineering fields (see **Annex 7**).

2.13 When the draft report of a full investigation is ready, the organisation(s) concerned and any individual(s) criticised or adversely affected will be invited to comment (section 12(6)). The final report will be given to the head(s) of the organisation(s) for information and implementation of our recommendations.

2.14 In an investigation report, the complaint is classified according to how far the allegations of maladministration are founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 2**).

Direct Investigation

2.15 Under section 7(1)(ii) of the Ordinance, The Ombudsman may initiate direct investigation ("DI") in the absence of complaints. This enables The Ombudsman to review matters of moment at a macro level, as opposed to individual cases, and examine systems with systemic problems or widespread deficiency.

Selection of Issues

2.16 Subjects for DI are carefully selected by a standing panel chaired by the Deputy Ombudsman and comprising the two Assistant Ombudsmen and a small DI Team.

2.17 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints on particular matters. These include cases "screened out" during our assessment process, which show some pattern of systemic problems or systematic maladministration (see **para. 2.5**). Common features of matters for DI are those:

- of community interest and concern, aspirations or expectations;
- of considerable scale or in significant number;
- not under examination by another agency; and
- not for the courts or tribunals.

DI Assessment

2.18 Before we formally launch a DI, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from, say, annual reports and websites, legislation and media reports. We will invariably seek information from the organisation(s) direct. If such assessment points to the need for further study, we will formally notify the head(s) of the organisation(s) and commence a DI.

2.19 Where our DI assessment finds no significant maladministration, or proactive improvement has been made by the organisation(s) concerned, we will not initiate a DI. We will simply produce a report on our findings as a "mini-DI" and forward it to the organisation(s) for comment. Such a report outlines the background to the issue, appraises public concern and presents our observations on the role and the action (especially any remedial measures) of the organisation(s) concerned. Where appropriate, we make recommendations for improvement.

Investigation Methodology

2.20 The Ombudsman's powers for DI are similar to those for investigations into complaints. However, unlike individual complaints, it is our established practice to declare publicly the initiation of a DI and invite views from relevant sectors as well as the community at large. This is justified as the subjects are invariably of public interest.

2.21 We normally study all relevant files and documents from the organisation(s) concerned, hold discussions with the subject officer(s) and possibly other stakeholders, correspond with them for supplementary information and clarification, as well as making site visits for first-hand observation. As with investigation of complaints, we may also consult our Advisers.

2.22 Besides seeking comments in writing on the draft investigation report, we often discuss face-to-face with senior officers of the organisation(s) before finalisation. Where appropriate, their comments on our findings and recommendations will be incorporated into the report.

Implementation of Recommendations

2.23 Our recommendations to the organisation(s) concerned are intended to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report at regular intervals the progress of their implementation of the recommendations.

2.24 Our recommendations focus on improvement of administrative systems and procedures. However, where policies are found outdated or inequitable, The Ombudsman may offer some comments although they are generally not matters for our investigation.

2.25 Unlike Court verdicts, The Ombudsman's recommendations are not binding. However, where the head of the organisation disagrees with the findings or refuses to accept the recommendations, The Ombudsman may make a report to the Chief Executive. Similarly, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may also report to the Chief Executive. In such event, section 16(6) of the Ordinance requires that, within one month or such longer period as the Chief Executive may determine, a copy of the report be laid before the Legislative Council.

Secrecy Requirement and Publication of Reports

2.26 The Ombudsman, her staff and the Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy in respect of all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.27 It is our firmly established practice not to respond to any enquiry from third parties on individual complaints. However, some reports on investigation of complaints may be anonymised for publication in the public interest.

2.28 As a general rule, The Ombudsman publishes DI reports, anonymising all individuals involved, for public information through the media. Such reports form part of the library stock in our Resource Centre (see **Chapter 6**).

Enquiries and Complaints Processing

3.1 Enquiries and complaints received this year topped a record high, standing at 15,626 and 5,606[2] or 6.8% and 46.4%[3] over last year. This influx followed our adoption of a new publicity strategy spanning over four months and supplemented by other new measures (see **paras. 6.3 - 6.5** of Chapter 6). The upsurge in caseload placed greater pressure on staff of all investigation ranks and even the administrative support services.

Fig. 3.1



Enquiry Counter

Fig. 3.2

Enquiries and Complaints Received

Year	Enquiries	Complaints	
		only for us[4]	including those copied to us
2002/03	14,298	3,537	4,382
2003/04	12,552	3,859	4,661
2004/05	11,742	3,802	4,654
2005/06	14,633	3,828	4,266
2006/07	15,626	5,606	6,114

[2] *This does not include 508 "complaints to others copied to us", previously classified "potential complaints" (see **para. 3.7**).*

[3] *This is calculated on the basis of 3,828 complaints in 2005/06, i.e. total of 4,266 **less** "potential complaints" (438).*

[4] *These figures exclude "complaints to others copied to us" : see Note 2 above.*

3.2 Two issues of public concern during the year triggered a flood of "serial" or "serial type" enquiries and complaints:

- Typhoon Prapiroon brought in over 200 similar but slightly different complaints against the Hong Kong Observatory;
- Broadcasting Authority's criticism of a Radio Television Hong Kong programme attracted over 1,300 complaints, most of them copies of a standard letter.

"Serial" cases cause significant fluctuations in the statistics of "complaints received".

3.3 The rising trend in complaints by email, becoming evident in the past few years, intensified this year. Complaints by email, including most of the serial cases cited above, accounted for over 40% of all complaints received. Complaints lodged through the post has taken second place.

Fig. 3.3

Mode of Lodging Complaints

Mode	**2002/03**	**2003/04**	**2004/05**	**2005/06**	**2006/07[5]**
In person	425	324	396	231	412
In writing -					
by complaint form	1,270	722	934	613	586
by letter through post	682	1,634	1,599	1,303	1,002
by fax	978	972	615	863	836
by email	613	742	821	902	2,461
By telephone	414	267	289	354	309
Total	**4,382**	**4,661**	**4,654**	**4,266**	**5,606**

3.4 During the year, we processed 6,282 cases[6] and concluded 5,340. Among the latter, 2,385 were screened out because they were under restrictions by law or because they were outside our jurisdiction; and 1,239 not pursued because they were withdrawn, discontinued or not undertaken (see **para. 3.5**). The remaining 1,716 cases were screened in for further processing.

[5] *Figures in 2006/07 exclude "complaints to others copied to us".*

[6] *They comprised 5,606 new cases received and 676 cases carried forward from last year.*

3.5 As shown in **Fig. 3.4**, RAC remains our commonest mode of inquiry: 87.4% of cases screened in were concluded this way. It is less formal than full investigation and therefore more expeditious and quite effective for handling most cases. Despite our efforts at promoting mediation, only two cases were thus concluded in the year. We had attempted mediation in six other cases in the hope of facilitating easier, more amicable and speedier resolution. However, the parties concerned did not consent. We will continue to watch out for cases conducive to this mode.

Fig. 3.4

Complaints Screened in and Concluded

	2002/03	2003/04	2004/05	2005/06	2006/07
Preliminary Inquiries	2,172	1,834	1,873	1,758	1,643
INCH	*176*	*203*	*209*	*185*	*143*
RAC	*1,996*	*1,631*	*1,664*	*1,573*	*1,500*
Full Investigation	124	284	125	55	71
Mediation	6	7	6	12	2
Total	**2,302**	**2,125**	**2,004**	**1,825**	**1,716**

Cases Not Pursued

3.6 In my last report, I analysed the nature of complaints not pursuable. They include cases withdrawn by the complainant or discontinued by our Office after inquiry has commenced. They may also be cases which, under section 10(2)(d) of the Ordinance, I consider further inquiry unnecessary for the following reasons:

- a *prima facie* case of maladministration is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

This class of complaints has since been classified as cases "not undertaken", to distinguish them from those withdrawn or discontinued.

3.7 In further examining this class of complaints, we noted among them complaints addressed to other organisations and only copied to us with no request for our action. Hitherto, such cases had been named "potential complaints". These are really not complaints to us, at least not yet. In this light, we have re-named them as "complaints to others copied to us" (see **Annex 2**) to reflect their true nature. They are, therefore, excluded from the statistics on complaints to our Office. For the year under report, such cases numbered 508.

3.8 A breakdown of our caseload for the past five years is in **Table 1**.

Major Causes for Complaint

3.9 The five causes most mentioned by complainants this year were:

- error, wrong decision/advice;
- failure to follow procedures, delay;
- negligence, omissions;
- disparity in treatment, unfairness, selective enforcement; and
- ineffective control.

They were the same five as those last year, but the fourth and fifth have switched places.

3.10 As for the types of act of maladministration substantiated, the top five were:

- failure to follow procedures, delay;
- lack of response to complaint;
- ineffective control;
- error, wrong decision or advice; and
- negligence, omissions as well as faulty procedures.

"Staff attitude" has ranked low in terms of both cause for complaint and act of maladministration substantiated. This suggests that generally speaking, most public servants are regarded as courteous and helpful towards the clients they serve. Details are as shown in **Fig. 3.5**.

Fig. 3.5

Causes for Complaint and Forms of Maladministration Substantiated

Nature of allegation / maladministration identified	% among all concluded cases[@]	% among all acts of maladministration substantiated[#]
Error, wrong decision/advice	46.5%	12.2%
Failure to follow procedures, delay	11.0%	31.7%
Negligence, omissions	8.0%	9.8%
Disparity in treatment, unfairness, selective enforcement	7.4%	2.4%
Ineffective control	6.5%	14.6%
Faulty procedures	5.7%	9.8%
Lack of response to complaint	5.0%	17.1%
Staff attitude	4.7%	0%
Abuse of power	3.2%	0%
Others	2.0%	2.4%

[@] A total of 5,340 were concluded in 2006/07, including cases outside our jurisdiction, restricted or concluded after preliminary inquiries, mediation and full investigation (see Table 1) but excluding "complaints to others copied to us".

[#] 41 allegations were substantiated, substantiated other than alleged or partially substantiated after full investigation in 2006/07.

3.11 Eight of the departments in the "top ten" most complained about were the same as last year (see **Table 4**), with the Housing Department and the Food and Environmental Hygiene Department heading the league. This is understandable as they provide services directly impacting on almost all facets of our daily life. The Hong Kong Observatory, normally a rare target, came in fourth mainly because of the complaints drawn in by Typhoon Prapiroon. The Leisure and Cultural Services Department marginally came within range, with 127 complaints concluded during the year, a few more than the Water Supplies and the Transport Departments, both dropping out of the list this year.

Outcome of Inquiries

3.12 We conducted full investigation on 71 complaints, with 32 or 45.1% substantiated, partially substantiated and substantiated other than alleged (see **para. 2.14** of Chapter 2). The outcome of our full investigations are summarised in **Fig. 3.6**.

Fig. 3.6

Substantiation Rates of Complaints Concluded by Full Investigation

Classification	No. of Complaints	Percentage
Substantiated	15	21.1%
Partially substantiated	16	22.6%
Substantiated other than alleged	1	1.4%
Unsubstantiated	39	54.9%
Total	**71**	**100.0%**

3.13 Complaints concluded after preliminary inquiries are not classified as "substantiated" or not. However, as shown in **Fig. 3.7**, among the 1,500 cases concluded by RAC, we required remedial action by the organisations concerned in 277 or 18.5% of the cases. This compares with 17.1% last year. **Table 8** gives more details.

Fig. 3.7

Outcome of RAC Cases		
Outcome	**No. of Complaints**	**Percentage**
Remedial Action Required	277	18.5%
No evidence of maladministration	1,211	80.7%
Inconclusive	12	0.8%
Total	**1,500**	**100.0%**

Direct Investigation

3.14 During the year, four direct investigations and five direct investigation assessments (or "mini-direct investigations") were completed. Two other direct investigations were in progress at the end of the year. These are detailed in **Fig. 3.8**.

Fig. 3.8

(a) Direct Investigations Completed in 2006/07	
Date	**Subject**
11 September 2006	Administration of the Mid-Levels Administrative Moratorium
14 November 2006	System for Processing of Applications for Disability Allowance by Social Welfare Department
19 March 2007	Monitoring of Cases with Statutory Time Limit for Prosecution by the Food and Environmental Hygiene Department
31 March 2007	Assessment of Children with Specific Learning Difficulties

(b) Direct Investigation Assessments Completed in 2006/07	
Date	**Subject**
23 August 2006	Management of Roadside Non-Commercial Publicity Materials
20 November 2006	Tenants' Obligations under Senior Citizen Residences Scheme
20 November 2006	Vetting of Applications for Building Safety Loan
14 December 2006	Issue of Flood Warning
13 March 2007	Retrieval of Identity Cards from Foreign Domestic Helpers

(c) Direct Investigations in Progress	
Date Declared	**Subject**
5 February 2007	Mechanism for Handling Conflict of Interest in Organisations Subsidised by Leisure and Cultural Services Department
22 March 2007	Alleged Overcharging of Water Bills by the Water Supplies Department

3.15 Hitherto, our direct investigations have tended to be rather complex and extensive exercises spanning over quite some time. We note that announcement of our findings often attracts wide media and community interest. Given their value in public education and understanding of the administration of public services, we will undertake direct investigations on a smaller scale (say, in phases) and publish their outcome on earlier completion.

3.16 In particular, from time to time, where the scope of a topic identified for direct investigation is too widely encompassing to be undertaken at one go, we study it in more manageable phases. An example is the direct investigation on services for children with specific learning difficulties. We have just completed our study on the administration of the services for assessing and identifying these children as "phase one" in a series. We are now proceeding to subsequent phases on the other aspects, including the arrangements in internal (school) and external (public) examinations. Studies on other support services will follow.

Recommendations

3.17 As our prime purpose is to redress grievances, improve public administration and enhance client service, I make recommendations where due, on conclusion of full investigations and even preliminary inquiries.

3.18 As for direct investigations, often initiated without receiving complaint, my recommendations invariably aim to improve public administration in systems, procedures and practices.

3.19 The 71 cases concluded by full investigation and the four direct investigations completed during the year resulted in 76 and 58 recommendations respectively, making a total of 134. So far, 125 (93.3%) of them have been accepted by the organisations for implementation and 1 (0.7%) not accepted; 8 (6.0 %) are still under consideration.

3.20 Even with cases concluded by RAC, we make suggestions for systemic improvement. This year, 208 such suggestions were made, compared with 218 last year. A breakdown of these by organisations concerned is in **Table 8**.

Our Performance

3.21 Our performance pledges are detailed with our record of achievement in **Annex 6**. For the year under report, we again met our pledges fully in respect of handling enquiries and arranging group visits and talks.

3.22 In processing complaints, we almost met our pledges fully for acknowledging and completing initial assessment of complaints, with about 0.05% of the cases exceeding the target, and for processing cases outside jurisdiction or under restriction, with 0.4% exceeding the target (see **Fig. 3.9(a) and (b)**).

Fig. 3.9

(a) Response Time for Acknowledgement/Initial Assessment

Year	Response Time		
	Within 5 working days (target : 80%)	Within 6-10 working days (target : 20%)	More than 10 working days
2002/03	77.6%	11.8%	10.6%
2003/04	66.2%	30.7%	3.1%
2004/05	94.0%	4.2%	1.8%
2005/06	99.75%	0.22%	0.03%
2006/07	99.90%	0.05%	0.05%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction

Year	Response Time		
	Within 10 working days (target : 70%)	Within 11-15 working days (target : 30%)	More than 15 working days
2002/03	60.7%	37.1%	2.2%
2003/04	71.5%	22.1%	6.4%
2004/05	62.6%	34.4%	3.0%
2005/06	40.9%	57.3%	1.8%
2006/07	90.9%	8.7%	0.4%

(c) Processing Time for Other Cases Concluded

Year	Response Time		
	Less than 3 months (target : 60%)	Within 3-6 months (target : 40%)	More than 6 months
2002/03	57.5%	39.7%	2.8%
2003/04	51.1 %	45.7%	3.2%
2004/05	43.3%	53.7%	3.0%
2005/06	56.0%	41.0%	3.0%
2006/07	57.1%	40.3%	2.6%

3.23 For cases screened in for further processing, we were unable to meet our pledges fully. However, we improved on the percentage of complaints concluded in three months and those over six months (57.1% and 2.6% respectively, compared with 56.0% and 3.0% last year) (see **Fig. 3.9(c)**).

3.24 In my last report, I mentioned the introduction of a change in the calculation of our processing time, in response to a Legislative Council comment. As from this reporting year, we start clocking processing time when the complainants' consent and key information for a *prima facie* case are both available. This has contributed to the improvement in our achievement of pledges.

3.25 Longer processing time was necessary in some cases because of factors such as:

- complexity of the case;
- voluminous documents from parties to the complaint;
- new developments mid-stream;
- parties challenging our findings; and
- complainee organisations requiring more time for response to our inquiries.

In connection with the last factor, a number of departments and organisations had repeatedly requested extension of time for response to us. In particular, the Food and Environmental Hygiene Department has had to deal with a series of food safety issues in rapid succession. Understandably, it had often to take longer to supply information to us.

Overview

3.26 This was an exceptionally busy year for us, given the new publicity strategy and an unprecedented caseload. The convenience of email has made it easier for members of the public to take group action in airing grievance on matters of common concern. Such complaints would invariably engage much investigation time and support resources, putting significant pressure on our staff.

3.27 Notwithstanding this, we endeavour to cope with the increased workload and to serve both complainants and organisations as best we could, thanks to the dedication of our regular staff and the efforts of temporary investigators enlisted through our flexible staffing arrangements (see **para. 5.3** of Chapter 5). Meanwhile, we will continue to review our classification of complaints so that our complaint statistics may present the true picture as accurately as possible.

Enhancing Quality Administration

4.1 Enhancing quality administration is a key objective of our Office, apart from offering redress to individuals aggrieved by administrative acts of public organisations. This year, I made 134 recommendations after 71 full investigations and four direct investigations. I also put forward 208 suggestions in 1,500 cases concluded by RAC. We make a point of ensuring that our recommended measures are simple and practical, realistic and reasonable. Most of them have been accepted by the organisations concerned. We monitor their implementation and review their progress. If the organisations concerned should encounter unforeseen and genuine difficulties, we will revisit the matter with them afresh.

4.2 Every year after the tabling of The Ombudsman's Annual Report in the Legislative Council, the Administration submits a Government Minute to Honourable Members summarising the actions taken by the organisations concerned in implementing The Ombudsman's recommendations and suggestions.

4.3 In this connection, the measures introduced by those organisations have resulted in visible improvement to public administration and services. I am pleased that, in some cases, the organisations have promptly initiated improvement measures themselves during our inquiries, without waiting for our recommendations.

4.4 The improvement measures fall broadly into five areas:

(a) guidelines for clarity, consistency or efficiency in operation;

(b) better arrangements for inter-departmental co-ordination;

(c) measures for better public enquiry/complaint handling;

(d) measures for better client services;

(e) clearer information to the public;

Annex 8 gives some examples.

Safeguarding Human Rights

4.5 While The Ombudsman does not promote human rights as such, many services provided by Government are human rights related: e.g. housing, education, social welfare, medical and health care, and legal aid. In striving to ensure reasonableness, fairness and legality in the provision of such public services, The Ombudsman in effect holds a watching brief and safeguards citizens' rights to these services. When investigating alleged acts of maladministration, we inevitably have to take account of the laws and policies pertaining to the official acts being investigated. In the same way, if a complaint alleges breach of international covenant or convention applicable to Hong Kong, we will scrutinise whether the official actions being complained about accord with Government's obligations under the relevant covenant or convention.

4.6 In this context, one group of complainants merit special attention: prisoners. While they have violated the law, prisoners are still entitled to certain basic rights. Being in confinement, they are particularly vulnerable to abuse. To ensure that they are aware of their right to complain to The Ombudsman, special arrangements have been made with the Correctional Services Department ("CSD") to display notices at all CSD institutions and to have our postage-free complaint forms openly available for prisoners' use. It is relevant to note that under CSD's Prison Rules, an exception is made for prisoners' correspondence with The Ombudsman, unlike most other correspondence, not to be read by CSD staff and to be opened or searched only in the presence of the prisoner unless he or she does not want to be present.

4.7 One aspect of my work is specifically related to the civic and political rights of citizens. Under The Ombudsman Ordinance, I am charged with the responsibility to inquire into complaints of breach of the Government's Code on Access to Information, which aims to protect the citizen's right to access information held by the Administration.

4.8 This year, we received six complaints and one request for review of a case concluded last year. Of these seven cases, two were still under investigation while two others were not undertaken because there was no *prima facie* case of breach of the Code or the organisation concerned was already willing to review the complainant's request. In two of the three cases concluded after inquiries, we found the organisations' refusal to provide information to be justified on the grounds of protection of privacy of individuals and copyrights. As regards the remaining case we considered the refusal not justified. The case was eventually resolved with the organisation acceding to the complainant's revised request for information.

Addressing Systemic Issues

4.9 In handling complaints, we note problems that appear in more than one organisation or deficiencies that are more deep rooted and systemic. They cannot be fully addressed or resolved on the basis of individual complaints. Where we identify such issues, we draw them to the attention of the organisations concerned or the central Administration where justified. Where they require in-depth inquiries, we conduct direct investigations (see **paras. 2.15 - 2.22** of Chapter 2 and **3.14 - 3.16** of Chapter 3).

Joint Office on Seepage

4.10 In December 2004, Government set up a Joint Office with staff from the Buildings Department and Food and Environmental Hygiene Department on a trial basis, to deal with complaints of seepage. Considered a success after a review in mid-2005, the approach was extended in July 2006 to the whole territory with branch offices designated for all districts.

4.11 Despite the success claimed by the Administration, we continue to receive many complaints about mishandling of seepage, quite a number specifically levelled at the Joint Office. These complaints have revealed deficiencies in the operation of the Joint Office. My Office will continue to monitor its effectiveness.

Accountability

4.12 In my previous Annual Reports, I noted the trend for Government departments to contract out services. This trend has continued; so, too, the inflow of related complaints to us. We see outsourcing in many areas as an efficient and cost-effective way of service provision and do not expect departments concerned to attend to the daily operation of the contractor. However, we do take the view that contractors remain

only agents for service and those departments retain the ultimate responsibility for delivery and hence are still accountable for the quality and standard of the services. At my meeting in the Legislative Council on 11 December 2006, I apprised the Honourable Members of my view on outsourced public services. In this context, when considering complaints about poor service by contractors, my Office will take stock of this principal-agent relationship. In particular, we focus on the departments' duty in monitoring the performance of the contractor for assurance of quality in the service to the public.

Challenges from Parties

4.13 Our findings and decisions are at times subject to challenge from public organisations and from complainants. We take it as opportunities to re-examine our stance and practices and where necessary to improve our operation. We regularly remind ourselves to keep close scrutiny of our procedures and work processes; we also review our decisions to ensure they are fair and reasonable, both to the complainants and to the public organisations.

Revived Cases

4.14 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. Special procedures apply in the handling of "revived" cases. The original investigator will first give his or her view on the complainant's grounds for review. The case will then be examined by another investigator, or by the Chief Investigation Officer heading the team, on the basis of any fresh evidence or new angles. Requests for review are always scrutinised by the relevant Assistant Ombudsman and must additionally be vetted by my Deputy, before coming to me for final approval and conclusion.

4.15 In the reporting period, we received 336 requests for review, compared to 361 for last year. I varied my decision after review in 11 cases, compared with 13 last year.

Fig. 4.1

Revived cases

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3		8			11
Decision upheld		315			10	325
						336

4.16 Some complainants dissatisfied with my decisions would complain against individual investigation officers, alleging bias, lack of thoroughness or poor conduct in their inquiries. All such complaints are first considered by the head of office administration, to determine whether they are genuine complaints against the conduct of my staff. If so, he will handle the complaint independently (see **paras. 5.19 - 5.21** of Chapter 5) and report his findings to me. However, more often than not, such allegations really arise from dissatisfaction with the findings or conclusions of our inquiries, in fact my decisions. These complaints are treated as requests for review of the case. As investigation reports are subject to my personal approval, such allegations are, and must be seen as, actually complaints against my decisions, not my officers.

Judicial Review

4.17 Apart from asking The Ombudsman for review, individuals or organisations may also seek judicial review of my decisions by the court. As noted by the Chief Justice in his speech at the ceremonial opening of the Legal Year 2007, judicial review should not be viewed negatively as a hindrance to government but as providing an essential foundation for good governance under the rule of law. I consider the avenue of judicial review a particularly significant provision and ultimate safeguard for the integrity of my role and function since, in view of my statutory independence, my decision on a case is final.

4.18 This year, there was one case of judicial review sought by a complainant against my decision. The applicant had lodged a complaint with us against the Official Receiver's Office for not taking action against a trustee, who allegedly had acted inappropriately in handling a bankruptcy case. After conducting preliminary inquiries on this complaint, I concluded that the department had handled the complaint against the trustee quite properly and, on that basis, I closed the case. Dissatisfied with my decision, the complainant applied for judicial review. The High Court dismissed the application after hearing.

Unreasonable Complaints

4.19 From time to time we receive complaints from persons who, although being in the wrong or even having breached the law, accuse Government for being unreasonable in taking action against their wrong deeds. In one case, the complainant had unlawfully terraced a slope on Government land for private use and then complained to us when Government found this out and fenced off the area.

4.20 In another case, the complainant had been approved financial assistance from a Government agency and was to collect cheques periodically. He did so through an agent but refused to comply with the procedures for identity verification. On the first occasion, the staff member concerned exercised flexibility and allowed this. On the second occasion, the complainant demanded the same exceptional arrangement. The agency staff again tolerated this and asked the complainant to follow certain steps. The complainant did not follow the steps, resulting in some hiccups in the cheque collection. He then took the exception to be the rule and alleged inconsistency in the agency's handling of his requests.

4.21 We consider such complaints entirely unreasonable, being cases where the offender "shoots" first. In the first example, the complainant had breached the law and therefore had no cause for complaint. In the second case, the complainant not only exploited the agency staff's accommodating attitude but turned their one-time leniency into grounds for his repeated unreasonable demands and eventually even complaint against the staff.

4.22 We see yielding to unreasonable demands as unwise. It will only encourage abuse and may even foster disrespect for the authorities. We have no hesitation in criticising such unreasonable complaints when concluding our inquiries.

Defence from Organisations

4.23 At times, organisations disagree with our findings and conclusions. We welcome discussions, we are ready to consider new facts and perspectives and we amend our views where justified. However, it is important that full facts are revealed so that the issues under discussion can be put into the proper perspective. This is just as important when organisations express their views on our findings publicly. Organisations are, of course, entitled to inform the public of their views and positions but care must be exercised not to cloud the issues by presenting incomplete facts or misleading figures in defence of their positions.

Jurisdictional Review

4.24 During the year, we completed Part One of our jurisdictional review, which examined the following aspects:

(a) adding organisations to Schedule 1 to The Ombudsman Ordinance to place them within my purview;

(b) relaxing certain restrictions on my investigative powers in Schedule 2 to the Ordinance; and

(c) resolving some of the difficulties or uncertainties encountered by our officers in discharging their duties.

4.25 I have presented my report on the above, with recommendations, to the Administration.

4.26 Work is now in hand on Part Two of the review. This will survey developments in ombudsmanship worldwide and examine their possible implications on the ombudsman system in Hong Kong.

Overview

4.27 We are committed to contributing to open government and quality administration for our citizens. To this end, we place great emphasis, in the course of our inquiries, on identifying gaps and weaknesses in systems, `procedures and practices in administration and recommending improvement where called for. I appreciate the Administration taking our views and recommendations seriously and implementing them faithfully for continuing improvement to our public administration. This is the hallmark of a caring government.

4.28 We will continue to review our work with a view to enhancing our ability to safeguard citizens' rights and contribute to good governance in Hong Kong.



5.1 This is the sixth year since my Office delinked from Government systems and practices. We have continued to function effectively and independently with our own administrative and financial policies as well as operational processes and procedures.

Staffing

5.2 This year saw a massive influx of complaints, sustained over many months, probably due to our new strategy of spanning publicity from June to September to enhance awareness of our mission and services. The number of incoming complaints from July to October soared over 400 each month, with a record high of 783 in August.

5.3 This immense increase in caseload has put unprecedented pressure on our investigators and particularly created bottlenecks in the concluding stage. To maintain quality service and efficient delivery, I have recruited more temporary case officers, both part-time and full-time, than ever before, to supplement the regular workforce. Appointment of temporary staff gives me the flexibility of coping with workload fluctuations more effectively and economically. Our temporary resources this year is equivalent to 2.4 full-time regular staff. All of them have a wealth of experience in public service and proven ability in administration and management matters.

5.4 Meanwhile, with the general economic revival and a more vibrant job market in Hong Kong, my Office has experienced a steady turnover of staff in the past couple of years, particularly at entry levels. In 2006/07, a total of 6 investigation staff and 8 supporting staff left: some for family or personal reasons, others obviously for greener pastures. On each occasion, we have acted promptly to recruit and restore staffing to a level geared for effective operation of the Office. Despite our efforts, there were time gaps when we had to wait for the new entrants to report for duty. Then, they had to go through a necessary learning period before becoming fully functional.

Fig. 5.1

Staffing Complement

Breakdown of Staff	**As at 31.3.2005**	**As at 31.3.2006**	**As at 31.3.2007**
Directorate	4	4	4
Investigation	40	43	45
Administration & Support	40	38	41
Total no. of regular staff	**84**	**85**	**90**
Temporary staff: equivalence to full-time posts (total man-days)	0.9 (273.5)	1.2 (353)	2.4 (698)
Grand Total	**84.9**	**86.2**	**92.4**

5.5 In the past few years, I managed to maintain a steady complement of 84 to 85 staff, supplemented by a few temporary staff. However, for coping with the continual workload increase, I have recruited a few more staff this year. I am also planning to inject new blood for replenishing my investigation workforce in anticipation of impending retirements in the next few years.

Review of Remuneration Package

5.6 Upon delinking, I had established new remuneration packages for my staff appointed on or after 1 April 2001. As these packages have been in place for over five years, I reviewed their competitiveness having regard to the general improvement in economic outlook and employment opportunities in the community. A key concern of mine was to prepare and develop staff for succession planning.

5.7 This was a comprehensive review covering salary structure, award of increments, rates of cash allowance, level of gratuity, leave entitlement and medical and death benefits.

5.8 I decided that the salary structure, the policy of not awarding annual increment and the level of gratuity should remain unchanged. However, the criteria for awarding increments upon contract renewal were suitably modified to enhance the Office's competitiveness in retaining young and meritorious staff members. As for cash allowance, leave entitlement and medical, disablement and death benefits, we made appropriate adjustments with reference to practices in the civil service and comparable public organisations. In making my decisions, I took into consideration the high staff wastage, the long-term financial viability of my Office and the need for forward planning for succession in order to strike a balance between smooth and effective functioning of my Office not just in the short-term but also in the years ahead.

Saturday Shifts Arrangements

5.9 Following the implementation of the five-day week scheme in the civil service in July 2006, we also introduced a shift arrangement for my staff to be on duty once every four Saturdays with effect from October 2006. This arrangement aims to improve the quality of their family life without affecting our frontline services to the public. Basically, it operates on the following principles:

- maintaining existing level of services to the public (i.e., enquiry counter, Duty Officer for fresh complaints and telephone complaints) is maintained;
- no additional staffing resources; and
- no reduction in the conditioned hours of service for individual staff.

5.10 After three months, we improved the shift arrangements by revising the Saturday duty rosters to a team basis to facilitate better team work among officers.

Staff Training

5.11 I attach greater importance to developing the professionalism of my senior staff in complaint management. I have nominated seven of my senior staff for the following courses:

- What is New Public Management Now?
- Current Issues in Judicial Review
- Intensive Course on International Refugee Law

5.12 The first two courses were organised by the Civil Service Training and Development Institute ("CSTDI"). The last was a programme offered by the University of Hong Kong, which I had attended personally for enhancing my knowledge on international human rights.

5.13 Apart from upgrading the expertise of my staff, I also offer them opportunities to sharpen their language skills. CSTDI's web courses on the Cyber Centre Plus are available for staff to refresh their English writing skills at their own pace. Chinese writing courses on syntax, style and semantic logic were arranged. In addition, I also provide Putonghua training for all my investigation and frontline staff to better equip them for their daily work.

5.14 In July 2006, with the assistance of the Conflict Resolution Centre, we organised a second Mediation Training Workshop, further to the one in November 2003, for new investigation staff and staff members of invited scheduled organisations. On this occasion, a total of 15 officers from Government departments joined the workshop for learning the basic skills for applying mediation as a means of conflict resolution.

Fig. 5.2



Mediation Training

5.15 As for in-house training and experiences sharing, we exchanged views and discussed common practice issues at our regular open forums. Apart from subjects directly related to investigation, staff also shared with colleagues their experiences in other facets of public service. The topics covered in the year included:

- Administrative complaints handling vs criminal investigations
- Judicial review against The Ombudsman's decision
- Financial Reporting Council Ordinance
- Time management
- Film censorship in the United Kingdom and Hong Kong

Fig. 5.3



Open Forum

Occupational Health and Safety

5.16 Maintaining a safe and healthy working environment for my staff is always an important item on my agenda. More than 90% of my staff are provided with a desk top computer for performing their duties. With the introduction of the Occupational Safety and Health (Display Screen Equipment) Regulation in March 2003, we carried out a risk assessment for all staff according to the guidelines promulgated by the Labour Department for minimising the risk of health hazard due to prolonged use of display screen equipment.

5.17 In April 2006, we conducted another round of risk assessment. As a result of the assessment, we strengthened the precautionary measures for 18 workstations for meeting individual staff member's safety needs.

Fig. 5.4



Talk on Stress Management

5.18 Mental stress due to work pressure is another problem that has attracted my attention in the light of the massive influx of complaints. For this, we invited a representative from the Occupational Health Unit of the Labour Department to deliver a talk on "Stress Management" to us in August 2006. The talk was extremely useful for identifying the causes of mental stress and knowing about the relief strategies in our work setting. We shall continue to organise similar talks in future to enhance our awareness on the importance of occupational health and also our knowledge in preventing possible health hazards.

Complaints Against the Office

5.19 We have concluded altogether 12 complaints against the Office concerning staff manners, work procedures or both in 2006/07, each representing an individual's expectations of our services. Although these expectations vary in degree, they offer much food for thought in reviewing and, where appropriate, improving our procedures and practices.

5.20 As before, these complaints do not necessarily reflect on the performance of my staff or the quality of our inquiries. Often, they arise from dissatisfaction with my conclusions and decisions on cases. This is particularly where complainants did not find my decisions to their satisfaction or I did not conclude their cases in their favour.

5.21 Nevertheless, they serve as an important reminder that there is always room for improvement in our performance as we endeavour to meet the public's rising expectations of ever better and more efficient services.

Fig 5.5

Complaint against the Office concluded in 2006/07

Nautre	Substantiated	Partially Substantiated	Unsubstantiated	Incapable of Determination
Staff Manner (including delay and negligence)	1	2	2	3
Work Procedures			3	
Both Staff Manner and Work procedures		1		
Total	12			

6.1 To promote our mission, we regularly reach out to enhance public awareness of our functions and services. In this connection, we not only launch promotion campaigns through the media but also foster links with the community through visits, talks, publications and our Resource Centre. Meanwhile, we continue to communicate with Government departments and scheduled public organisations by meetings, seminars and workshops.

6.2 At the international level, The Ombudsman has participated actively in the affairs of the International Ombudsman Institute and Asian Ombudsman Association. We have learned from practices of Ombudsmen worldwide for refinement of our own system while sharing with them our experience.

Promotion Campaign

6.3 We adopted a new promotional strategy this year. We have placed greater emphasis on educating the public on precisely what is the jurisdiction of The Ombudsman and how they may lodge complaints. Instead of concentrating our multi-media publicity efforts in one core period, we have split our campaign into two phases to span over four months. The first phase was launched in early June to early July and the second row from September to mid-October. This arrangement was intended to facilitate evaluation of the effectiveness of the different media and to maximise the publicity impact over a longer period.

Fig. 6.1



TV Commercial - “Daily Info-Service”

6.4 In Phase I, we relied on the more traditional modes, broadcasting our conventional Announcement of Public Interest ("API") filmclip on TV and radio, video on bus/mini-bus and trains (i.e. Roadshow, First Vision, Hong Kong Cable News Express). We started with electronic media with comparatively lower viewership or audienceship; then followed up with those enjoying higher audience ratings. Meanwhile, we also staged roving exhibitions in Immigration Tower in Wan Chai, Cheung Sha Wan Government Offices and Sha Tin Government Offices. Staff members were on site to answer general enquiries, but not to receive complaints as we are required by law to maintain strictest secrecy and, therefore, maximum security for cases.

6.5 In Phase II, we went online *via* Yahoo! News and a new mode of TV commercial - "Daily Info-service" for bringing to the public messages on the jurisdiction of the Ombudsman. The package consists of five 15-second educational skits, each carrying a specific theme relating to the lodging or our handling of complaints.

6.6 To compare the effectiveness of various publicity methods, we sent out a survey form to enquirers and complainants from July to the end of October 2006. As expected, the conventional API on TV had the most significant impact on the overall caseload. The number of incoming complaints soared and remained high throughout the launch period. The roving exhibition was among the least effective. The "Daily Info-service" was favourably commented on for its clearly educational function. Client responses have provided us with much useful insight for mapping out our future strategy for publicity and public education.

Fig. 6.2



Roving Exhibition at Government Offices

Media Relations

6.7 The Ombudsman holds press conferences at regular intervals to announce investigations of significant public interest. This year, we have published the findings of a complaint case, results of four direct investigations and declared two direct investigation. Summaries of the announced investigation reports are released through our printed periodical newsletter *Ombuds News*, also available on our website.

Fig. 6.3



The Ombudsman in Press Conference

6.8 In the main, these matters have been well covered by the local media. They help to inform the public about aspects of public administration, heighten awareness of our Office and often generate an upsurge of enquiries or complaints from members of the public.

Fig 6.4

Press Conference	
6 April 2006	• Announcement of findings of direct investigation into the Medical Fee Waiver System administered by the Hospital Authority and the Social Welfare Department
5 July 2006	• Publication of 18th Annual Report
14 September 2006	• Declaration of direct investigation into the monitoring of cases with statutory time limit for prosecution by the Food and Environmental Hygiene Department • Announcement of findings of direct investigation into the Administration of the Mid-Levels Moratorium
16 November 2006	• Announcement of findings of direct investigation on system for processing applications for disability allowance by the Social Welfare Department
7 December 2006	• Announcement of findings from a case concerning a complaint against the Vocational Training Council for impropriety in conducting a tender exercise
22 March 2007	• Declaration of direct investigation into the alleged overcharging of water bills by the Water Supplies Department • Announcement of findings of direct investigation on monitoring of cases with statutory time limit for prosecution by the Food and Environmental Hygiene Department

Public Information

6.9 We update our publications from time to time. This year, our leaflet on “Performance Pledge” and the booklet on “Tips for Making a Proper Complaint” have been revised to provide clearer and up-to-date information on our functions and responsibilities. These publications are available in our Resource Centre, our website and Government District Offices.

6.10 Our website **www.ombudsman.gov.hk** was first launched over ten years ago. We have now revamped it for fresh design, clearer layout and more stimulating contents. The new format will be launched in 2nd Quarter of 2007.

Fig. 6.5



Launch of our new website

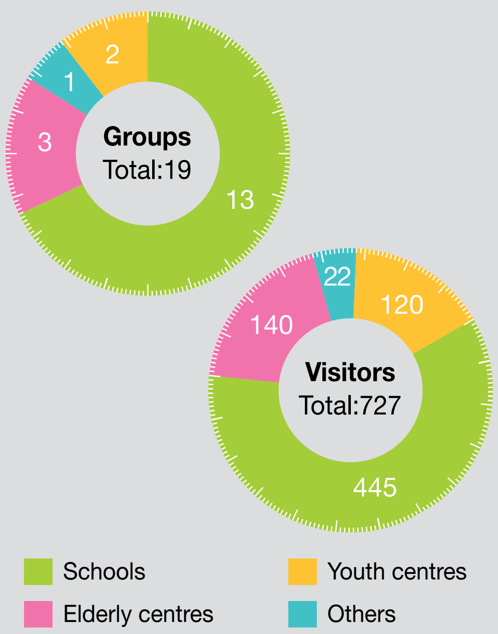
Resource Centre

6.11 Our Resource Centre is an open mini-library of Ombudsman-related publications. There you can find a full collection of our *Ombuds News*, video recordings and newsclips on our activities as well as periodicals from overseas Ombudsman offices.

6.12 We welcome members of the public to visit our Resource Centre individually or in groups from youth and elderly centres, schools and other community organisations. We regard these occasions as important opportunities for exchange of views and public education, helping to enhance mutual understanding between the public and our Office. We also hope to promote a positive complaint culture in the community. In 2006/07, we had about 727 persons from 19 groups visiting our Office.

Fig. 6.6

Figures on Visit to Resource Centre



The Ombudsman's Awards

6.13 On 20 September 2006, we celebrated the 10th Anniversary of The Ombudsman's Awards Scheme with more than 140 officers from about 30 Government departments and public organisations. A special "10-Year Grand Award" was presented to the organisation with consistently and continuously outstanding performance in complaint handling over the past decade. At the same time, three public organisations and 25 public officers were acknowledged for their exemplary efforts in improving public administration, for their professionalism and positive attitude in handling complaints and for providing quality service to their clients in the past year.

Fig. 6.7



The Ombudsman's Awards Presentation Ceremony

Fig. 6.8



The Ombudsman and representatives from winning organisations

Winning Organisations for 2006:

- Inland Revenue Department (10-year Grand Award)
- Hong Kong Housing Society (Grand Award)
- Planning Department
- Post Office

Fig. 6.9

Individual Awards for 2006

Organisation	No. of Awardees
Buildings Department	1
Correctional Services Department	1
Customs and Excise Department	2
Department of Health	1
Drainage Services Department	1
Efficiency Unit	1
Electrical and Mechanical Services Department	1
Food and Environmental Hygiene Department	2
Highways Department	1
Hospital Authority	1
Housing Department	1
Immigration Department	2
Inland Revenue Department	2
Judiciary	1
Mandatory Provident Fund Schemes Authority	2
Securities and Futures Commission	1
Social Welfare Department	1
Urban Renewal Authority	1
Water Supplies Department	2

Complaint Management Workshops

6.14 This year, we continued to run our complaint management workshops in the more interactive way as in the year before. In these half-day sessions, I met with those responsible for handling complaints in different Government departments and scheduled organisations. I talked to them about my philosophy and stance on complaints handling. Then we had free discussion and frank exchange of views on issues of common concern, or positions adopted on specific issues. This arrangement was well received. Such workshops will be held in alternate years.

Fig. 6.10



Complaint Management Workshop

Ombudsman with Departmental Directorate

6.15 This is the second year that I have met with directorate officers of Government departments. This year, my meeting with the directorate of the Home Affairs Department was particularly fruitful as all District Officers were present. They are well placed to feel the pulse of the community and I used the opportunity to share with them the feedback on issues of community concern. I also underlined the importance of positive organisational culture for effective complaint management. Such exchanges will be arranged with other departments in future.

Seminars for Target Groups

6.16 My priority is to share the concept of ombudsmanship with the young people and members of academia. In November 2006, I gave a talk on "Human Rights and The Ombudsman" at The University of Hong Kong for students from the Faculty of Law, Department of Social Work and Department of Politics and Public Administration. Representatives from human rights bodies were also present. In February 2007, I was invited to address a session on the Blue Skies Programme of The Chinese University of Hong Kong and shared my experience with some 100 new principals from primary and secondary schools. I also spoke on social accountability and leadership. I enjoyed the occasion and was much encouraged by the active participation of those present.

Fig. 6.11



Seminar at The University of Hong Kong

Outreach Talks

6.17 Apart from receiving visitors, we also go out to give talks to Government departments, schools, universities and centres for elderly persons. This year, we visited 3 departments and organisations.

Meeting with Legislative Councillors

6.18 I meet Members of the Legislative Council annually to update them on our work and to exchange views with them on the operation of my Office. At the meeting on 11 December 2006, I briefed them on the progress of my jurisdictional review (see **Chapter 4**). On The Ombudsman's jurisdiction, Members expressed deep concern over my role in monitoring the public services privatised or contracted out by Government departments. They were also worried about the impact of the considerable caseload increase and the cut in resources in recent years on the performance of my Office, in particular, compliance with our performance pledges. We had open and useful discussions on all these matters.

Support from Justices of the Peace

6.19 Since the launch of our Justices of the Peace ("JPs") Assistance Scheme in 1996, over 400 non-official JPs have given it their support. This enthusiasm of the JPs helps to disseminate our messages to different sectors of our community. To enhance their understanding of public services, we continued to arrange regular orientation visits to organisations on Schedule 1 to The Ombudsman Ordinance. During the year, they visited the Post Office's Airmail Centre in the Hong Kong International Airport and the Integrated Call Centre of the Efficiency Unit in the Chief Secretary for Administration's Office. The JPs' positive response to these events is most heartening and we will maintain such visit programme.

International Liaison

6.20 While active locally, I was also busy on the international level, gleaning good practices from overseas Ombudsman's offices and promoting Hong Kong's system at the same

time. I am currently the Secretary of both the International Ombudsman Institute ("IOI") and the Asian Ombudsman Association ("AOA"). I attended an IOI regional meetings in Australia, and an Executive Committee and Broad meeting in Austria and Spain in April, June and October 2006 respectively and the AOA Board of Directors Meeting in Pakistan in December 2006. Through maintaining close contact with our counterparts worldwide, we achieve mutual benefits for furthering professional development.

Fig. 6.12



JPs' Visit to Integrated Call Centre

Exchange with the Mainland

6.21 In late November 2006, a ten-member delegation of the China Supervision Institute, came to Hong Kong for an exchange programme that lasted for six days. During this period, I was impressed by their open-mindedness in expressing their views on their systems and practices in monitoring public administration. The delegation also visited a few Government departments and public organisations to sample at first-hand the legal and administrative systems of Hong Kong. Hong Kong will return a visit to the Mainland in 2007.

Fig. 6.13



China Exchange Programme

6.22 Apart from the Exchange Programme, we have continued to receive groups from the Mainland. These groups are briefed by my senior officers on our jurisdiction and *modus operandi*, followed by a free exchange of views and ideas. This year, we gave talks to 16 groups comprising 170 participants.

Human Rights Seminar in Fuzhou, China

6.23 Upon invitation, I was a speaker at the "International Seminar on Reform on Prisons and Human Rights Protection" in Fuzhou of China in December 2006. The seminar was jointly organised by the Supreme People's Procuratorate of China, The Parliamentary Ombudsman, Norway and the United Nations Development Programme. I spoke on "The Ombudsman and Protection of Prisoners' Rights in Hong Kong" while other speakers from Norway and China spoke on topics in relation to prison administration. This was my first ever participation in a "human rights" seminar in the Mainland. We had a meaningful exchange of views on the subject. The seminar, with around 200 participants, was well received.

Opinion Survey

6.24 Every three to four years, we conduct surveys for feedback from the public for service review and improvement: the last were in 2000 and 2003 respectively. In between, we carry out internal surveys to collect opinions from complainants, like that we did in 2004. In 2007, the Census and Statistics Department will conduct another thematic household survey. We have decided to take part at a fee, to gain insight for better planning and delivery of our services. The survey is expected to be completed in early 2008.

6.25 To gauge public feedback, we also take reference from media reports and commentaries. We treasure public comments and welcome constructive suggestions for service enhancement.

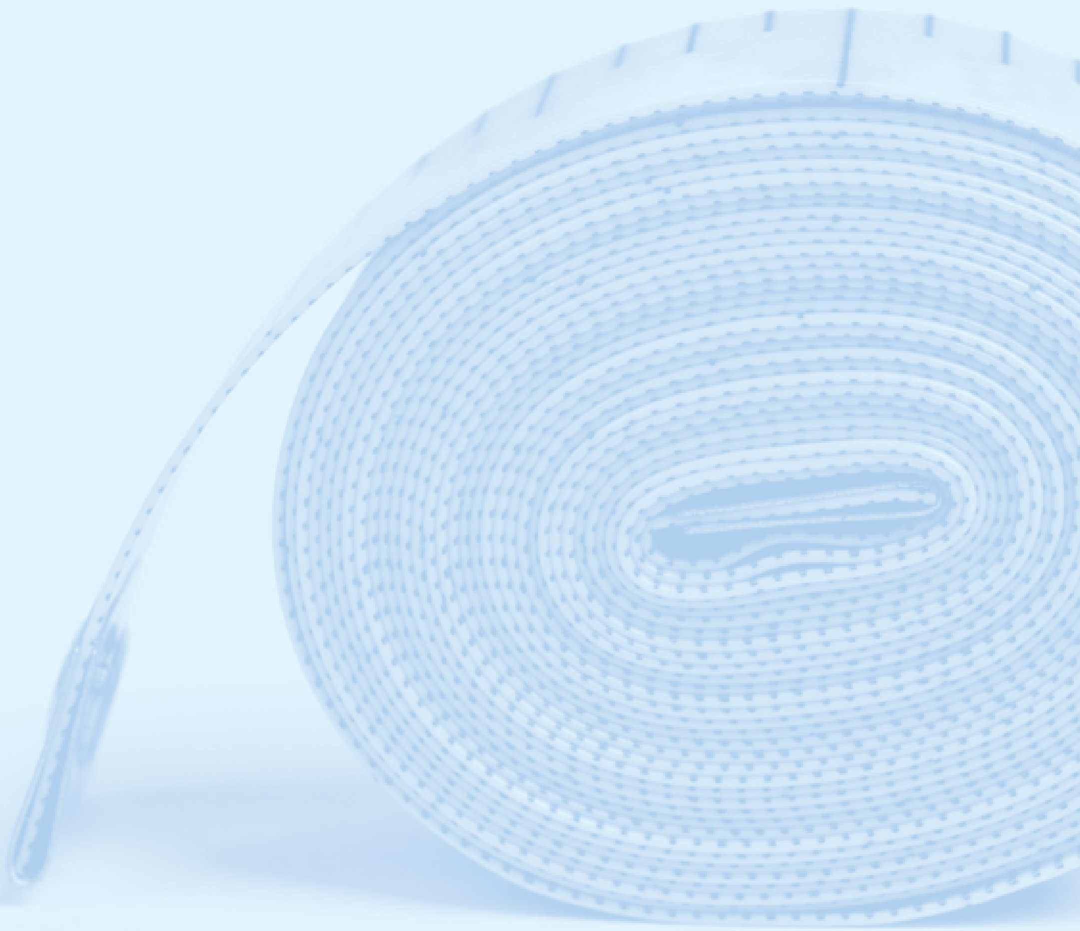
Annex 1 List of Scheduled Organisations

Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission
2. Airport Authority
3. Employees Retraining Board
4. Equal Opportunities Commission
5. Financial Reporting Council
6. Hong Kong Arts Development Council
7. Hong Kong Housing Authority
8. Hong Kong Housing Society
9. Hong Kong Monetary Authority
10. Hong Kong Sports Institute Limited
11. Hospital Authority
12. Kowloon-Canton Railway Corporation
13. Legislative Council Secretariat
14. Mandatory Provident Fund Schemes Authority
15. Privacy Commissioner for Personal Data
16. Securities and Futures Commission
17. The Hong Kong Examinations and Assessment Authority
18. Urban Renewal Authority
19. Vocational Training Council

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Independent Commission Against Corruption
2. Hong Kong Auxiliary Police Force
3. Hong Kong Police Force
4. Secretariat of the Independent Police Complaints Council
5. Secretariat of the Public Service Commission



Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, including whether there is sufficient *prima facie* evidence of maladministration to justify an investigation and whether the organisation concerned is taking action on the matter.

Complaint to Others Copied to Us

This is a complaint addressed to another organisation and copied to The Ombudsman with no request for action. It may become a complaint when The Ombudsman sees reasons to intervene.

Direct Investigation ("DI")

This is an investigation initiated in the public interest under section 7(1) of The Ombudsman Ordinance. DIs generally concern administrative matters of a systemic nature or significant events of wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment sometimes carried out on a topic identified as a potential subject for direct investigation. This includes collection of background information, appraisal of the extent of public concern and consideration of any remedial action by the relevant authorities. It is dubbed "a mini direct investigation" when, on completion, it is found that a fuller inquiry is not necessary.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint, under section 7(i) or section 11A of The Ombudsman Ordinance. This may be for the reasons set out in section 8 (read in conjunction with Schedule 2) or section 10 of the Ordinance identified after inquiries have commenced or because of such factors as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request to this Office for information or advice. It is not yet, but may develop into, a complaint.

Full Investigation

This is an investigation initiated under section 7(1) of The Ombudsman Ordinance.

Incapable of Determination

This refers to a situation where The Ombudsman feels unable or unwilling to make a conclusive determination at the end of a full investigation. In effect, The Ombudsman is not prepared to draw any conclusion on the complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated. This is the equivalent of an "open verdict" in court proceedings.

Internal Complaint Handling Programme ("INCH")

This is a form of preliminary inquiries for relatively simple cases. With the consent of the complainant, we refer the case to the organisation concerned for investigation and reply direct to the complainant, with a copy to this Office. In such cases, The Ombudsman may request the organisation to address specific issues in its reply. If the reply is found wanting, then regardless of whether the complainant is satisfied, The Ombudsman may decide to continue with the inquiries and may even escalate to a full investigation.

Investigation

This refers to an investigation under section 7(1) of The Ombudsman Ordinance. It may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in section 2 of The Ombudsman Ordinance. Basically, it means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out under section 11B of The Ombudsman Ordinance where the complainant and representative of the organisation concerned meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organization subject to complaint is not within The Ombudsman's authority to investigate by reason of section 8 read with Schedule 2 to The Ombudsman Ordinance.

Preliminary Inquiries

These refer to inquiries conducted under section 11A of The Ombudsman Ordinance to determine whether a full investigation should be conducted.

Rendering Assistance / Clarification ("RAC")

This is another form of preliminary inquiries where INCH is considered inappropriate, often because the relationship between the complainant and the organization concerned is already strained. Under RAC, this Office collects and assesses all relevant facts and then presents to the complainant the explanation, findings with our observations, and where appropriate, improvement or remedial suggestions. If further inquiry is warranted, a full investigation will be conducted. Like INCH, RAC may escalate to a full investigation.

Restrictions on Investigation

These are the restrictions on investigation set out in section 10 of The Ombudsman Ordinance.

Substantiated other than Alleged

This is where a complainant's allegations are unsubstantiated but in the course of investigation, The Ombudsman discovers other aspects of significant maladministration. In such event, The Ombudsman will comment on these other deficiencies. As the complainant has not complained about these other matters, they are categorized as "substantiated other than alleged".

Substantiated, Partially Substantiated and Not Substantiated

This is categorisation of the findings on completion of a full investigation. The spectrum reflects varying degrees of culpability, within the definition of "maladministration" under section 2 of The Ombudsman Ordinance. A complaint is considered to be "partially substantiated" if it consists of more than one complaint points, only some of which are found to be substantiated.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint already lodged with this Office. However, depending on the nature or gravity of the allegations, The Ombudsman may decide to continue the investigation despite the request to withdraw.

Annex 3 Actions Not Subject to Investigation

Actions not Subject to Investigation - Schedule 2, Cap. 397

1. Security, defence or international relations

2. Legal proceedings or prosecution decisions

3. Exercise of powers to pardon criminals

4. Contractual or other commercial transactions

5. Personnel matters

6. Grant of honours, awards or privileges by Government

7. Actions by the Chief Executive personally

8. Imposition or variation of conditions of land grant

9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases

10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption



Restrictions on Investigation of Complaints - section 10(1), Cap. 397

1. Complainant having knowledge of subject of complaint for more than two years

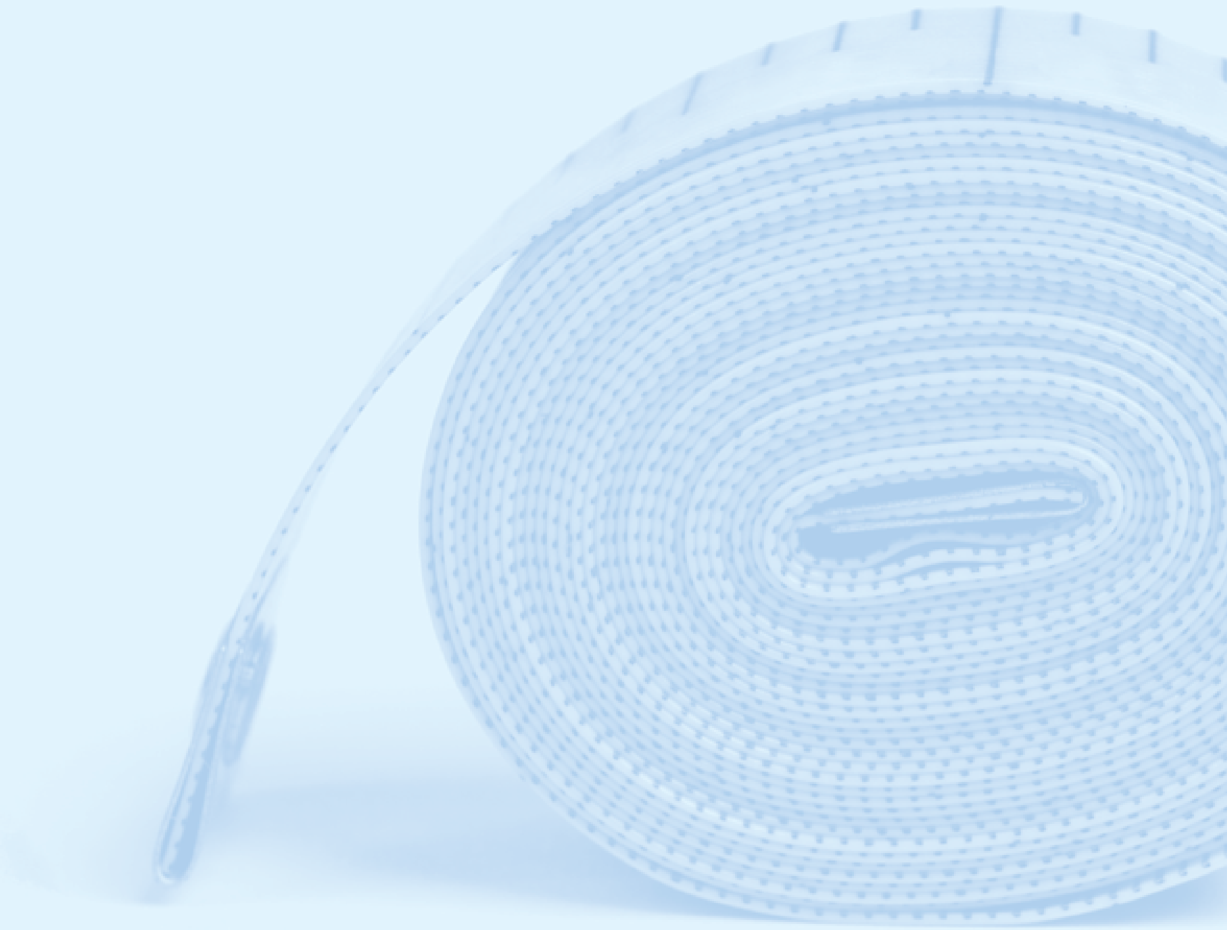
2. Complaint made anonymously

3. Complainant not identifiable or traceable

4. Complaint not made by person aggrieved or suitable representative

5. Subject of complaint and complainant having no connection with Hong Kong

6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant



Annex 5 Restrictions on Investigation of Complaints

Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration

2. Subject of complaint is trivial

3. Complaint is frivolous or vexatious or is not made in good faith

4. Investigation is, for any other reason, unnecessary

Annex 6 Achievement of Performance Pledges

(1 April 2006 to 31 March 2007)

(A) Enquiries*

	Response Time		
By telephone or in person	Immediate	Within 30 minutes	More than 30 minutes
	15,512 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	167 (98.2%)	3 (1.8%)	0

* Excluding enquiries on existing complaints.

(B) Complaints**

	Response Time		
Initial assessment / acknowledgement	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	3,836 (99.9%)	2 (0.05%)	2 (0.05%)

** Excluding complaints to others copied to us and cases outside jurisdiction or under restriction.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	2,169 (90.94%)	207 (8.68%)	9 (0.38%)	1,687 (57.09%)	1,192 (40.34%)	76 (2.57%)

(C) Group visits and talks

	Response Time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	24 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	12 (100%)	0



Panel of Professional Advisers

Advisers

Mr Brian G. BAILLIE

Mr Francis Shu-ying BONG

Mrs Anne R. CARVER

Professor Johannes M.M. CHAN

Professor T.K. CHAN

Mr Yan-kee CHENG

Mr Joseph Ming-kuen CHOW

Professor M.J.A. COORAY

Dr Raymond Chung-tai HO

Professor P.C. HO

Mr Anson Kam-choy KAN

Professor Kar-neng LAI

Mr Edmund Kwong-ho LEUNG

Dr Man-chiu LO

Professor Felice Lieh-MAK

Professor Dhirendra K. SRIVASTAVA

Mr Benny Y.T. TAI

Mr Vincent Kam-chuen TSE

Mr Chi-tin WAN

Mr Siu-kai WAN

Professor Gui-guo WANG

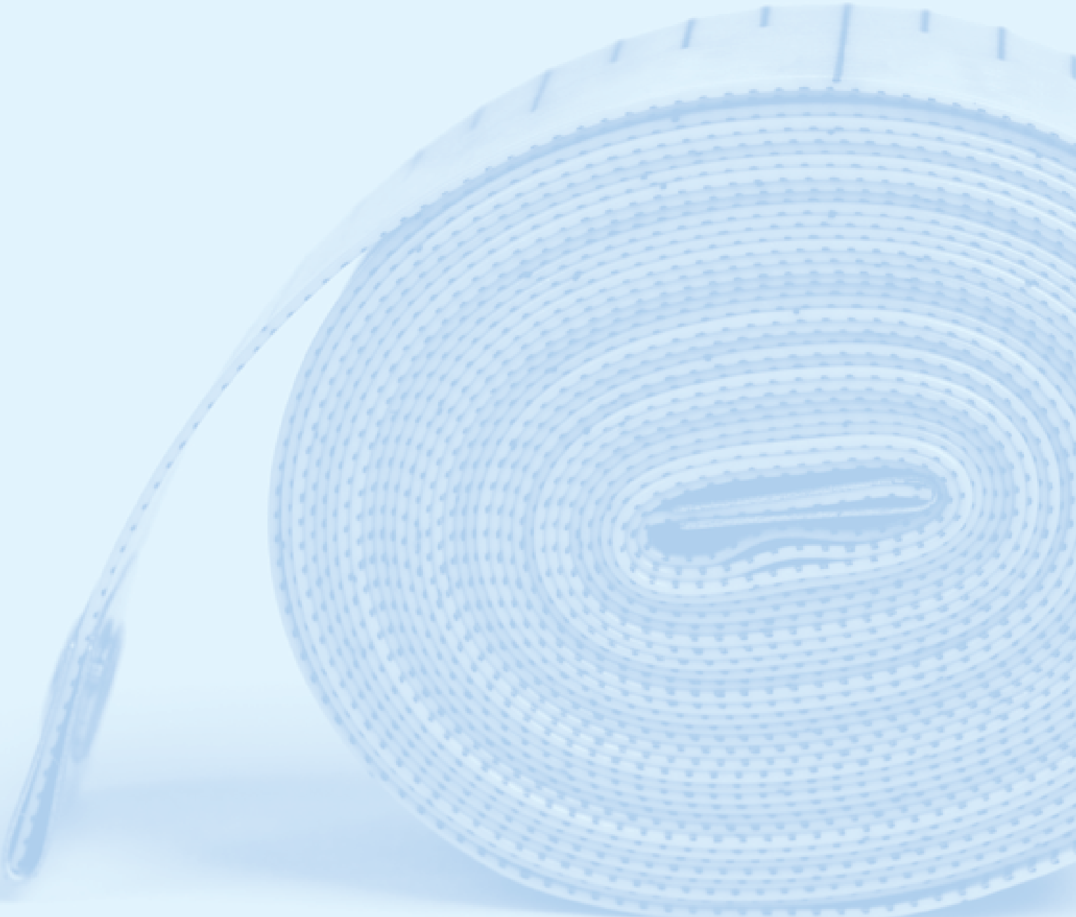
Dr Chung-kwong WONG

Professor John WONG

Professor C.Y. YEUNG

Mr Patrick Se-kit YUEN

* In alphabetical order



Annex 8 Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(a) Guidelines for clarity, consistency or efficiency in operation	
Organisation	**Administrative Enhancement**
Civil Aviation Department	Guidelines on permission for people with past offence records to work in airport shops reviewed to make them more in line with the Government policy to encourage employment of such people
Food and Environmental Hygiene Department ("FEHD")	Procedural guidelines issued on application for entry warrants and gaining entry to private premises, with the difference in nature between a statutory notice for intended entry and a mere proposal for visit appointment clarified
FEHD	Procedures improved to enhance accountability for and proper documentation of goods seized in action against illegal hawking
FEHD	New set of procedural guidelines issued to define clearly FEHD's monitoring role during exhumation of human remains
Housing Department	Guidelines on allocating public rental housing in the case of divorced tenants revised, with clear time frame for effecting the allocation, including the issue of Notices to Quit
Social Welfare Department	Advice given to non-government organisations for them to put in place proper guidelines for determining the degree of urgency in cases requiring service

Annex 8 Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(b) Better arrangements for inter-departmental co-ordination	
Organisation	**Administrative Enhancement**
Drainage Services Department/FEHD	Protocol established to enhance communication between the two departments at the district level for better handling of blockage, defects and other problems and nuisance associated with the public drainage system
Home Affairs Department ("HAD")	Reminder issued to District Offices on their coordinating role on district management matters where no department claims responsibility, with special emphasis on maintenance of drainage systems, subject of the complaint in question
HAD/Land Registry ("LR")	Arrangement established for accurate and complete information on t'ong managers to be provided by LR to HAD to avoid misunderstanding regarding whether rates exemption is applicable to a t'ong
Leisure and Cultural Services Department ("LCSD")	Arrangement made with the Integrated Call Centre ("ICC") of the Efficiency Unit to accord priority in referring complaints to LCSD made through the ICC regarding abuse or misuse of public playgrounds, especially for complaints made after office hours

(c) Measures for better public enquiry/complaint handling	
Organisation	**Administrative Enhancement**
Agriculture, Fisheries and Conservation Department ("AFCD")	Guidelines issued on proper procedures for handling complaints against staff or the department's action arising from law enforcement operations
FEHD	New instructions issued reminding staff of the need to handle, in accordance with departmental policies, procedures and practices, any enquiry despite that it is the subject of an ongoing inquiry by The Ombudsman in response to a complaint lodged by the enquirer
Immigration Department ("Imm D")	Funds obtained, on Imm D's initiative shortly after The Ombudsman had commenced an inquiry, to upgrade the hardware system of its customer enquiry hotline service to shorten the waiting time of enquirers
Securities and Futures Commission	Internal practice revised to retain telephone conversation records involving complaints against staff for a period of two years, instead of three months as for general enquiry and other complaint cases

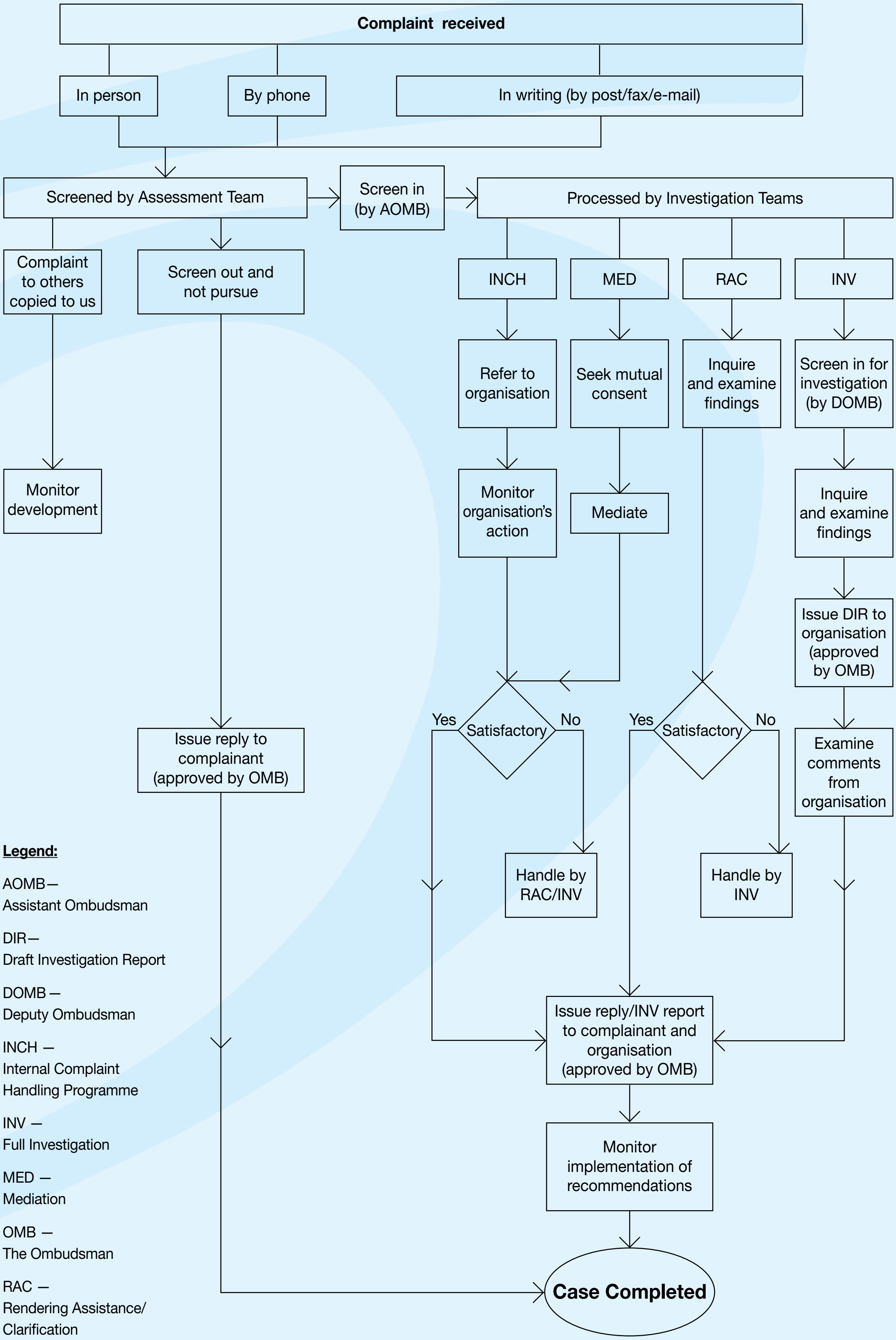
(d) Measures for better services

Organisation	Administrative Enhancement
Fire Services Department	Frequency of surprise inspections of a target building at risk of fire safety increased and educational talks and advice given to the incorporated owners of the building
FEHD	District staff are instructed to better equip themselves (e.g. with binoculars) in identifying the source of nuisance in investigating complaints of dripping from air conditioners
FEHD	Enhanced liaison established with the property management office of a target building located in a private street afflicted with rampant illegal shop extension for better control of the situation
Lands Department	A more practicable schedule for site inspections introduced to ensure timely monitoring of developments of New Territories Exempted Houses; and the inclusion in the permit for such development of a requirement for building works to commence only after completion of site formation works changed from a standard practice to inclusion only when warranted, to ensure more focused and effective enforcement
LCSD	A new set of procedural guidelines introduced on locker management for LCSD's leisure and recreation venues both as better anti-theft measures and for proper handling of reports of theft
LCSD	Measures introduced in a number of public parks to prevent entry of dogs, including: A front gate or railings at park entrance, stepped up patrols and joint operations conducted with AFCD to catch stray dogs

Annex 8 Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(e) Clearer information to the public	
Organisation	**Administrative Enhancement**
FEHD	Clearer wording provided in the public notice against littering (feeding of birds) in public places to remove doubts on the illegality of feeding birds in public places
LCSD	Notices displayed at the entrances of all public swimming pools on (a) the terms and conditions for admission at concessionary rates and (b) the delegated power of LCSD contractor staff working at the pools to enforce such terms and conditions
Transport Department	A note included in the application form for International Driving Permit informing applicants that they need to check with the overseas authorities concerned if they want to know whether or not the country in question accepts the Hong Kong Driving Licence
Water Supplies Department	The practice of issuing final bills for outstanding water charges revised so that the bill also shows the account holder's name, thus minimizing the chance of the subsequent registered consumer unwittingly paying other people's bill

Annex 9 Flow Chart on Handling of a Complaint



Legend:

AOMB – Assistant Ombudsman

DIR – Draft Investigation Report

DOMB – Deputy Ombudsman

INCH – Internal Complaint Handling Programme

INV – Full Investigation

MED – Mediation

OMB – The Ombudsman

RAC – Rendering Assistance/ Clarification

Annex 10 Guidelines for Initiating Direct Investigations

Under section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman is empowered to initiate investigations of his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in the approach to problems of public interest and concern. It is particularly useful to:

(a) follow through systemic problems which investigation of a complaint alone may not resolve;

(b) nip problems in the bud by addressing deficiencies in systems and procedures; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaints, but are believed or suspected to be the underlying reasons for complaint.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines:

(a) the matter concerns public administration and involve alleged or suspected maladministration as defined in The Ombudsman Ordinance;

(b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;

(c) individual grievances will normally not be a candidate for direct investigation, as there is no reason why the individual concerned cannot come lodge a complaint personally;

(d) a complaint will otherwise not be actionable under the restrictions in section 10(1) of The Ombudsman Ordinance, e.g. annoymous complainant, not the aggrieved person, but the matter is nevertheless of grave concern to The Ombudsman;

(e) the matter is normally not subject to the jurisdiction of the Court or a tribunal constituted under any Ordinance *or* it would not be reasonable to expect the affected person(s) to resort to the Court or any tribunal for remedy; and

(f) the time is opportune for a direct investigation, weighing against the consequences of not doing so.

These are no more than guidelines and are by no means exhaustive. Much will depend on the actual matter or problems.



Annex 11 List of Direct Investigations Completed

1994/95

1. Unauthorised building works

1995/96

2. Overcrowding relief in public housing
3. Accommodation for foreign domestic helpers
4. Unauthorised building works in New Territories exempted houses

1996/97

5. Provision of emergency vehicular access and fire services installations and equipment for public and private building developments
6. Problem of water main bursts
7. Co-ordination between the Social Welfare Department and the Housing Department in processing application for housing transfer on social grounds
8. Selected issues on general out-patient service in public clinics and hospitals
9. The Education Department failing to complete, on a timely basis, the processing of an application from a hearing impaired student to attend a special school

1997/98

10. Government telephone enquiry hotline services
11. Fisheries Development Loan Fund administered by the Agriculture and Fisheries Department
12. Arrangements for the closure of schools due to heavy persistent rain
13. Issue and sale of special stamps and philatelic products
14. Taxi licensing system
15. Co-ordination between the Drainage Services Department and the Environmental Protection Department over the protection of public beaches from being polluted by sewage discharges
16. Charging of management fees in Home Ownership Scheme Estates managed by the Housing Department

Annex 11 List of Direct Investigations Completed

1998/99

17. Dispensary service of the Department of Health
18. Handling of trade documents by the Trade Department
19. Recovery of public rental flats under the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme by the Housing Department
20. Registration of tutorial schools
21. Commissioning and operation of New Airport at Chek Lap Kok
22. Restaurant licensing system
23. Issues pertaining to imported pharmaceutical products

1999/00

24. Registration and inspection of kindergartens
25. Provision and management of private medical and dental clinic services in public housing estates
26. Regulatory mechanism for the import/export, storage and transportation of used motor vehicles/ cycles and related spare parts

2000/01

27. Regulatory mechanism for local travel agents for inbound tours
28. Selected issues concerning the provision of retraining courses by the Employees Retraining Board
29. Clearance of Provisional Urban Council tenants and licence holders affected by the Land Development Corporation's development projects
30. Selected issues concerning the management of government crematoria
31. Procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity

Annex 11 List of Direct Investigations Completed

2001/02

32. Procedures for handling travellers suspected of using false or otherwise suspect travel documents
33. Management of construction projects by the Housing Authority and the Housing Department
34. Administration of public examinations
35. Mechanism for enforcing the prohibition of smoking in no smoking areas and public transport carriers

2002/03

36. The Education Department's contingency and relief measures for the secondary school places allocation exercise 2001
37. Funding of sports programmes by the Hong Kong Sports Development Board
38. Administration of vehicle registration marks auctions
39. Mechanism for handling missing patients in hospitals of the Hospital Authority
40. Monitoring of charitable fund-raising activities
41. Role of the Home Affairs Department in facilitating the formation of owners' corporations

2003/04

42. Enforcement of the Education Ordinance on universal basic education
43. Operation of the Integrated Call Centre
44. Assistance provided by the Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings
45. Prevention of abuse of the Comprehensive Social Security Assistance Scheme
46. Handling of examination scripts under marking

2004/05

47. 2003 Priority arrangements for surplus teachers in aided primary schools
48. Enforcement of the Building Management Ordinance
49. Enforcement action on unauthorised building works in New Territories exempted houses
50. Administration of urn grave cemeteries
51. Bloodworm incidents in public swimming pools

Annex 11 List of Direct Investigations Completed

2005/06

52. Letting of market stalls by auction
53. Monitoring of property services agents by the Housing Department
54. Monitoring of assigned-out cases by the Legal Aid Department
55. Medical fee waiver system

2006/07

56. Administration of the Mid-Levels Moratorium
57. System for Processing Applications for Disability Allowance by the Social Welfare Department
58. Monitoring of Cases with Statutory Time Limit for Prosecution by the Food and Environmental Hygiene Department
59. Assessment of Children with Specific Learning Difficulties

EDUCATION AND MANPOWER BUREAU ("EMB") AND DEPARTMENT OF HEALTH ("DH")

Case No. OMB/DI/134

Assessment of Children with Specific Learning Difficulties

(Investigation commenced on 1 September 2005 and completed on 31 March 2007)

Background

Many parents of children with specific learning difficulties ("SpLD") are ignorant about what services are available, who provide them or how and how far they are delivered. Concerned whether Government has systems and procedures in place to ensure timely identification of these children and adequate assistance for them, The Ombudsman initiated a direct investigation.

What is SpLD?

2. Characteristically, despite normal intelligence and education opportunities, children with SpLD have problems with one or more of the basic processes: listening, speaking, reading, writing, reasoning and mathematical calculations.



Assessment Services: from Birth to Primary School

Department of Health

3. ***Family Health Service*** conducts routine interviews for all children from birth to the age of five. Any child suspected of having developmental or learning problems is referred to the Child Assessment Service for further evaluation. ***Child Assessment Service*** provides multidisciplinary services for children up to age 12 with developmental problems. ***Student Health Service*** provides free annual health assessment for all primary and secondary school students joining the Service. For suspected cases of SpLD, further psychosocial health and psychological assessments are conducted.

Education and Manpower Bureau

4. Identification and intervention are conducted in stages of a process of ***"Assessment through Teaching"***. In September each year, teachers observe primary one students' performance. Between December and January, teachers complete the Observation Checklists for Teachers ("OCT"). After mid-January, a special team from the school analyses the result of the OCT and identifies students with learning difficulties:

(a) for students assessed to have mild learning difficulties, the school will determine the appropriate support services. Students who show no improvement after one term will be referred to educational psychologists for assessment;

(b) students assessed to have marked learning difficulties are referred to educational psychologists for further assessment; and

(c) students assessed to have SpLD receive additional funding and professional support.

5. Teachers separately assess students who have not been assessed by OCT but suspected to have SpLD.

Observations and Opinions

Prevalence of SpLD

6. Statistics in the past four years show a rising trend of children assessed to have SpLD:

	2002/03	2003/04	2004/05	2005/06
(a) Primary school student population	436,023	423,235	402,652	381,428
(b) Number of students newly assessed to have SpLD	980	922	1,065	1,658
(c) Primary one student population	63,774	60,497	54,123	50,362
(d) Number of students newly assessed to have SpLD	149	215	297	497



The available figures may not represent the real prevalence rate of SpLD in Hong Kong. EMB should, in consultation with DH, liaise with experts and stakeholders in this field to come to more realistic and accurate data for overall planning and provision of assessment and support services for children with SpLD, their parents and schools.

Parental Awareness

7. Investigation shows that parents in general lack awareness and knowledge of SpLD, the assessment services available and authorities for assistance.

EMB Assessment Service

8. *Educational Psychology Service ("EPS")*. EMB has its own educational psychologists but is progressively outsourcing the EPS. The number of EMB educational psychologists[1] has decreased recently and an imbalance of workload, compared with the outsourced EPS, is observed.

9. *Performance Pledge.* There are specific time frames in some stages of the "Assessment through Teaching". Target time frames for the remaining stages are necessary to ensure timely services.

[1] *There were 30 in 2003/04, 27 in 2004/05, 28 in 2005/06, and 27 in 2006/07.*

10. *Assessment Reports.* Parents' understanding of their children's condition is crucial. The assessment reports provided to them should be in full and in layman terms.

11. *Transparency of Process.* EMB does not tell parents what, and how, psycho-educational assessment will be conducted.

DH Assessment Service

12. *Performance Pledge and Assessment Reports.* There is no performance pledge for the Student Health Service to complete assessment of new cases within a definite time frame. The clinical psychologist's report is very informative. However, only summary assessment reports are provided to the parents and the school.

Inter-departmental Coordination

13. *Clearer Definition of Responsibilities between EMB and DH.* EMB leads in assessing all students from primary one onwards in public sector schools, and DH runs a comprehensive service for children before school age and has been diagnosing some with co-morbid condition. Ideally, identification of SpLD should cover all children from preschool age for early intervention. Clearer definition of responsibilities between EMB and DH will enable parents and teachers to understand better what, and where, services are available.

14. *Assessment Services.* EMB and DH hold half-yearly liaison meetings but the scope of discussion should be extended for closer cooperation and collaboration in the provision of such services.

15. *Collation of Statistics.* EMB and DH keep separate statistics on cases assessed to have SpLD and adopt different counting methods and reporting years.

Coordination with Non-Government Organisations ("NGOs")

16. Given the evident commitment and contribution of NGOs, the burden of responsibilities on EMB and DH can be shared with NGOs for more effective services.

Recommendations

17. The Ombudsman made 20 recommendations to EMB, DH and the central Administration, including:

EMB and DH Action

(a) To review the assessment criteria and to come to more realistic and accurate data on SpLD.

(b) To extend the scope of the liaison meeting between EMB and DH and to align in statistical compilation.

(c) To coordinate in publicity effort.

(d) To enhance cooperation with NGOs.

EMB Action

(e) To set target time frames for all the stages of the "Assessment through Teaching" process.

(f) To provide, on request, both parents and schools with assessment reports in full and in terms that can be understood by lay persons.

DH Action

(g) To set a target completion date for assessment by the Student Health Service.

(h) To provide, on request, parents and schools with a detailed assessment report.

Central Administration Action

(i) To work out clearer definition of responsibilities between EMB and DH.

(j) To examine the feasibility of identifying SpLD among preschool and kindergarten children.

18. EMB and DH generally accepted our recommendations.

ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB"), HOUSING, PLANNING AND LANDS BUREAU ("HPLB"), LANDS DEPARTMENT ("Lands D"), BUILDINGS DEPARTMENT ("BD"), PLANNING DEPARTMENT ("Plan D") AND TRANSPORT DEPARTMENT ("TD")

Case No. OMB/DI/119

Administration of the Mid-Levels Moratorium

(Investigation commenced on 26 August 2004 and completed on 11 September 2006)

Background

In 1972, Government introduced an administrative moratorium ("the Moratorium") to restrict building development in Mid-Levels to ease traffic congestion in the area. The Moratorium has remained in force since. Our investigation into a complaint raised questions as to how the Moratorium has been administered. Against this background, The Ombudsman initiated a direct investigation to examine the rationale for the Moratorium, the roles and responsibilities of the relevant bureaux and departments in its administration and the review mechanism, if any.

The Moratorium

2. The Moratorium aimed to restrict building development by:

(a) deferment of sale of public land;

(b) for sites under restricted lease, deferment of lease modification which would give rise to a greater intensity of development; and

(c) for sites under unrestricted lease, use of the powers under the Buildings Ordinance to prevent more intensive redevelopment.

Roles and Responsibilities of Bureaux and Departments

3. The following bureaux and departments (and their predecessors since 1972) were involved in the administration of the Moratorium:

(a) Lands D - sale of Government land and lease modification;

(b) BD - enforcement of the Buildings Ordinance and Regulations;

(c) Plan D - processing planning applications under Outline Zoning Plans ("OZPs") for the Mid-Levels area;

(d) TD - conducting or commissioning studies to assess the traffic situation;

(e) ETWB - overall coordination, including monitoring, assessing and reviewing the need for the Moratorium; and

(f) HPLB - policy bureau for (a), (b) and (c).



Effectiveness of the Moratorium

4. Despite the Moratorium, the number of residential units in Mid-Levels has continued to grow, particularly during the period from 1985 to 1996. Eight traffic studies on Mid-Levels by TD between 1973 and 2005 showed that the traffic condition had never been satisfactory. The Moratorium has clearly failed its stated objective: the continued building developments and redevelopments have resulted in a rise in the number of residents and volume of traffic in Mid-Levels.

Evaluation

5. The limited effectiveness, or failure, is explained below.

Inherent Limitations and Poor Planning

6. Only four Government sites were available in Mid-levels: so, the deferment of public land sale could have little impact. Most private sites in Mid-Levels are under unrestricted lease and hence lease modification is not necessary for redevelopment. As regards sites under unrestricted leases, an Appeal Tribunal determination in late 1972 showed that the Buildings Ordinance could not be used to refuse building development on grounds of intensity.

7. The ineffectiveness of the *administrative* Moratorium led to the Legislative Council passing legislation for a temporary statutory restriction on building development in August 1973. This required the Building Authority to refuse all building plans submitted for the first time. This stop-gap measure was extended four times until 1978. Another statutory

restriction on building development, on geotechnical grounds, was then introduced and lasted from 1979 to 1982. Thereafter, building development in Mid-Levels has boomed, curbed only to some extent by the imposition in 1990 of a plot ratio of 5 in "Residential Group (B)" zone in the Mid-Levels West OZP.

8. It would appear that the initiator(s) of the Moratorium were not fully aware of the inherent limitations mentioned above.

Varying Degrees of Support from Key Players

9. **BD** (and its predecessors) could not apply the Buildings Ordinance and Regulations to refuse building development on grounds of intensity, but enforced the temporary statutory restrictions, which helped to control building developments. **Plan D**, in processing planning applications in Mid-Levels, had consulted the relevant bureaux and departments and taken account of the Moratorium. **TD** had conducted studies to monitor the traffic situation. These were all efforts in support of the Moratorium.

10. However, **Lands D**'s approach to lease modification was found to be somewhat "liberal" or "loose". It had the net effect of facilitating building development and leading to more traffic, contrary to the intent of the Moratorium.

11. In a complaint case we studied, Lands D had loosely defined "house" and removed the height restriction of a site, so that the site meant originally for one "house" could be developed into a two-tower, ten-storey condominium with many more flats.

Weak Coordination

12. Neither ETWB nor its predecessors have demonstrated the necessary leadership or initiative by calling for regular assessment or comprehensive review or directing the departments concerned to implement the Moratorium more stringently and effectively. Bureaux and departments were left to define its own role and develop its own strategy. Consequently, the number of residential units has increased significantly, despite the Moratorium and the belated plot ratio restriction.

Repercussions of Government Restructuring

13. The need for continuity of responsibility and coordination in implementation has been overlooked in the multiple restructuring exercises of Government over the years. In the 1970s, one policy branch had policy responsibility over lands, planning, traffic and transport matters, with a single operational department, i.e. the Public Works Department ("PWD"), being the *de facto* overall coordinator for the implementation of the Moratorium. Major Government restructuring in 1982 split the land and traffic/transport policies between different branches and defederalised PWD. This dismantled the central coordination without providing an effective replacement mechanism.

Conclusions

14. Though well-intentioned, the Moratorium was doomed to fail from the outset due to inherent limitations, poor planning and weak coordination, insufficient support from some key players and lack of monitoring.

15. It offers good reference for Government reorganisation, particularly on the need for continuity of responsibility and coordination in the implementation of major policies.

Recommendations

16. The Ombudsman has made the following recommendations:

Effectiveness

(a) The bureaux and departments concerned should consider what measures are necessary to supplement, strengthen or replace the Moratorium.

Coordination and Delineation of Responsibilities

(b) ETWB should:

(i) review the need, or otherwise, for the continuation of the Moratorium; and

(ii) if such need was established, give clear guidelines to the bureaux and departments concerned for proper implementation and close cooperation in coordination.

Transparency

(c) Government should make a clear statement on the way forward.

(d) The bureaux and departments concerned should keep the public posted on developments or changes.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB/DI/155

Monitoring of Cases with Statutory Time Limit for Prosecution

(Investigation commenced on 14 September 2006 and completed on 19 March 2007)

Background

FEHD was responsible for enforcing legislation on food safety and environmental hygiene. Prosecution of such offences had to be brought within a statutory time limit of six months.

Prosecution Procedures

2. When an action officer found that an offence had been committed, he would prepare a summons file for reporting to the section head at the rank of Senior Health Inspector ("SHI(District)[2]"). SHI(District) would vet the summons file to ensure sufficient *prima facie* evidence for prosecution and forward it to the Prosecution Section in Headquarters. SHI(Prosecution) would double check the evidence and then a clerical staff would input the data into the Judiciary's Case and Summons Management System for issue of summons.

3. A case exceeding the statutory time limit required approval from a Chief Health Inspector to be dropped. For cases arising from complaints, SHI(District) would inform the complainants of the outcome.

4. Over the past three years, 33 summonses were time-barred for the following reasons:

Reasons	Summonses
Mistake	3
Ignorance of legal requirement	3
Misplacement of file	2
Delay	12
Report issued by Government Laboratory after time limit	11
Advice issued by Department of Justice on or after time-bar date	2

Observations and Opinions

5. We found the following deficiencies:

(a) a communication gap existed between the Prosecution Section and district staff;

(b) better coordination with the Government Laboratory was necessary;

(c) in two cases, staff concerned covered up mistakes, i.e. misplaced files, by telling the complainant partial truth or even a lie;

(d) monitoring of cases by Headquarters was minimal and by directorate, lacking; and

(e) time allowed for bringing prosecution against unauthorised alterations was insufficient.

6. Timely and proper management of cases was crucial to effective and efficient discharge of duty for the administration of justice. We considered that directorate staff should have an overview of the situation, particularly regarding withdrawal of prosecution.

[2] *For simplicity, SHI(District) also denotes SHI of the Food Surveillance and Complaint Section.*

7. In enforcing the Public Health and Municipal Services Ordinance and various regulations, FEHD safeguarded food hygiene and public health for the community. Even a few slips might cause untold damage to food safety and affect public confidence. Rigorous vigilance was of critical importance.

Recommendations

8. The Ombudsman made 22 recommendations, including the following:

(a) To review the coordination between District operations and Prosecution Section.

(b) To involve the directorate for approving withdrawal of prosecution and in scrutinising replies to complainants on such cases.

(c) To submit regular returns on prosecution which did not proceed (for whatever reason) for directorate scrutiny.

(d) To consider amending the law on the time allowed for prosecuting offences in relation to unauthorised alteration.

(e) To alert the Government Laboratory to the need for tests for urgent cases and check progress to keep abreast of the time-bar date.

9. FEHD accepted all our recommendations and even initiated some improvement measures of their own during our inquiries.

SOCIAL WELFARE DEPARTMENT (“SWD”)

Case No. OMB/DI/151

System for Processing Applications for Disability Allowance

(Investigation commenced on 20 October 2005 and completed on 14 November 2006)

Background

In the wake of media reports about cases of overpayment, The Ombudsman initiated a direct investigation into SWD’s system for processing applications for Disability Allowance (“DA”).

DA Scheme

2. The DA scheme provides financial assistance for persons certified by the Director of Health or the Chief Executive of the Hospital Authority (“Hosp A”) to be “severely disabled”.

3. There are two types of DA: Higher Disability Allowance (“HDA”) and Normal Disability Allowance (“NDA”) at $2,250 and $1,125 respectively per month. For **HDA**, applicants must be:

(a) in need of constant attendance from others in daily life; and

(b) not receiving care in a "Government or subvented residential institution".

Application Procedures

4. Applications are essentially on a self-declaration "honour" system. SWD requires applicants:

(a) to attest to the truthfulness and completeness of the information provided;

(b) to report subsequent changes, including admission to "Government or subvented residential institution"; and

(c) to confirm their understanding of the legal consequences of knowingly giving false statements.

Explanatory Materials

5. Over the years, SWD has provided some explanatory materials to help applicants understand the eligibility criteria and application procedures:

(a) Social Security Allowance Scheme Pamphlet (1973);

(b) Notice to DA Applicants/Guardians/Appointees (2001); and

(c) Guidance Notes on Application for Social Security Allowance (2005).



Mechanism for Approving Applications

6. SWD staff processed applications according to the department's Social Security Manual of Procedures ("the Manual"). Applications are checked and approved by an Investigating Officer ("IO") and Authorising Officer respectively.

Mechanism for Detecting Errors

Case Reviews

7. In case reviews, recipients are required to report any change in circumstances which may affect their eligibility. The frequency of review is as follows:

Type of DA	Disabling condition as certified by medical officer	Frequency of case review
NDA	Permanent	None since March 1992
	Non-permanent	Before expiry of the period covered by medical assessment
HDA	Permanent	Once every 3 years
	Non-permanent	Before expiry of the period covered by medical assessment

Cross-checking Arrangements

8. To detect unreported changes in recipients' circumstances that may affect their continuing eligibility, cross-checking arrangements with the Immigration Department and Correctional Services Department and other offices within SWD have been introduced over the years. Cross-checking of hospitalisation records with Hosp A was introduced in 2001 and that of records of boarding in special schools with the Education and Manpower Bureau ("EMB"), in 2005.

Random Checks

9. Random checks are conducted biennially on 10% of NDA cases involving recipients aged 70 or above; but none on other cases.

Overpayment

10. DA is paid in advance. HDA overpayment arises mainly from recipients' unreported or undetected admission into "Government or subvented residential institutions".

11. Between 2001/02 and 2005/06, there were 6,132 cases* detected, amounting to $21.2 million. These cases represent 8.44% of the total HDA caseload (72,686 cases) and 1.09% of the total HDA expenditure ($1,944.3 million). (*Note: SWD commented that this figure included multiple instances of overpayment to the same recipients, e.g. due to frequent and repeated admissions to hospital.)

Repayment

12. Regardless of the cause of overpayment, SWD seeks to recover the overpaid allowance from the recipients, while avoiding undue financial hardship to them.

13. Separately, under Government's Financial and Accounting Regulations, officers who approve payments which should not have been authorised may be personally liable to surcharge.

Our Observations and Opinions

14. After studying over 80 cases, we had the following comments.

15. Government's commitment to caring for those genuinely in need is commendable. However, charged with administration of the scheme, SWD has the duty to ensure that DA applications are processed properly.

Dissemination of Information to Applicants

16. An applicant receiving care in a "Government or subvented residential institution" is not eligible for HDA. Hence, unless its definition is clear to both applicants/recipients and SWD staff, overpayment, i.e. payment of HDA to persons qualified only for NDA, can easily occur.

17. However, the Social Security Allowance Pamphlet lacked a clear definition of the institutions within the meaning of the term. This was not clarified until June 2005.

18. It was also not made clear in application/review forms until August 2005 that such institutions include EMB-subsidised boarding schools.

19. The Manual did not require staff to explain the meaning of "Government or subvented residential institution". It did not mention that such institutions included EMB-subsidised boarding special schools. Our case studies revealed that records as to what information staff had explained to applicants and recipients were scanty, incomplete or even non-existent.

Mechanism for Approving Applications

20. The Manual did not inform IOs how and where to check whether or not an institution falls within "Government or subvented residential institutions".

21. The Manual was also not clear on requiring or reminding staff to ask applicants and recipients specifically on the circumstances directly relevant to their eligibility. In our case studies, we found the staff to have failed to focus on or verify recipients' boarding status with subsidised special schools. Wrong payment of HDA resulted.

Mechanism for Detecting Errors

22. Given the large number of recipients and the data-matching mechanisms in place, we considered the case review mechanism acceptable.

23. We commended SWD for introducing cross-checking arrangements, though more comprehensive only in recent years.

24. No random checks were conducted on NDA cases involving recipients aged below 70 and HDA cases. We considered some random checks desirable.

Repayment

25. Apparently, SWD had made little attempt to trace the cause(s) of overpayment or the causes of errors or irregularities. There were obvious contradictions and deficiencies in its file records and recipients' statements.

26. We supported SWD's recovery of overpayment in order to account properly for the use of public funds. We also agreed that SWD should work out repayment arrangements so as to avoid financial hardship to the recipients concerned. However, we asked SWD to consider evidence brought to its attention to ensure that individual cases were resolved fairly and equitably.

27. SWD should observe the Financial and Accounting Regulations and, where appropriate, surcharge officers who had approved payments that should not have been authorised.

Recommendations

28. The Ombudsman made recommendations to the Director of Social Welfare, including:

(a) To publicise the conditions of the scheme to remind applicants and recipients of their obligation to provide full and truthful information as well as possible legal implications for non-compliance.

(b) To draw up guidelines to require staff to explain clearly to applicants and recipients the definition of the term "Government or subvented residential institution".

(c) To require staff to record in a standardised and detailed manner the information that they are obliged to explain to applicants and recipients in application interviews or case reviews.

(d) To inform staff how and where to look for up-to-date information on Government or subvented residential institutions.

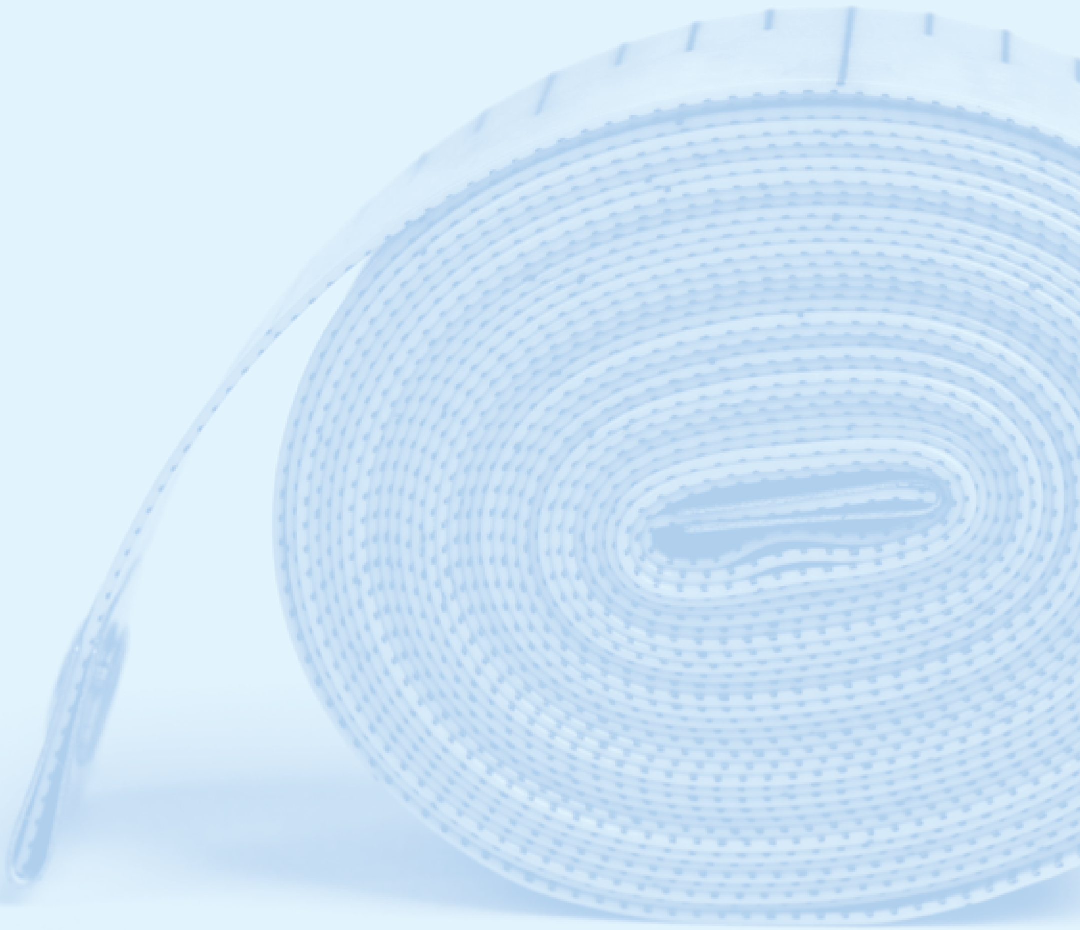
(e) To revise the Manual to guide staff how to make follow-up enquiries for ascertaining any changes of circumstances affecting recipients' eligibility.

(f) To publicise the cross-checking mechanisms to deter fraud.

(g) To consider conducting random checks on HDA cases and NDA cases involving recipients aged below 70.

(h) To tighten up the guidelines for determining the cause(s) of overpayment in individual cases.

(i) To continue to recover overpayment having due regard to evidence in cases brought to its attention.



BUILDINGS DEPARTMENT ("BD")

Case No. OMB/DI/140

Building Safety Loan Scheme

(Assessment commenced on 15 March 2005 and completed on 20 November 2006)

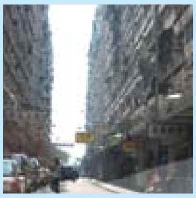
Background

Since July 2001, the Building Safety Loan Scheme ("BSLS") had been implemented to provide loans to owners of private buildings for improving their safety and maintenance. Noting media reports on debris falling off old buildings, The Ombudsman was concerned over the efficiency and effectiveness of BSLS and initiated this direct investigation assessment.

Observations and Conclusion

Publicity Efforts

2. BD had launched multi-media publicity programmes to promote public awareness of BSLS. These included television and radio appeals and advertisements at Mass Transit Railway and Kowloon-Canton Railway stations, bus stops and on minibuses.



Steady Increase in Approved Cases

3. Having kept a watching brief from March 2005 to November 2006, we noted a steady increase in the number of cases and in the amount of loans approved:

	28.2.2005	31.7.2005	28.2.2006	31.8.2006
Running total of approved cases	9,247	10,404	11,519	12,977
Running total of approved loan	$275M	$305M	$335M	$383M

These figures indicated increase in public awareness of BSLS. In the circumstances, The Ombudsman decided to conclude the study.

DRAINAGE SERVICES DEPARTMENT (“DSD”)

Case No. OMB/DI/158

Issue of Flood Warning in Sheung Wan, Central and Western District

(Assessment commenced on 2 June 2006 and completed on 14 December 2006)

Incidents of Flood Watch Failure

Certain areas of Sheung Wan are low-lying and become flooded during high tide with heavy rain. Since 3 April 2006, DSD has launched an interim service known as *Flood Watch* to forewarn residents and shopkeepers of possible flooding. In the wake of a false alarm on 24 April 2006, The Ombudsman was concerned over the possibility of failure to issue timely warning and initiated this direct investigation assessment.

2. On 16 July 2006, heavy rain flooded the area but *Flood Watch* was not triggered because the tide level was not high enough.

Improvements



3. The false alarm in April had been caused by a computer program error, which was rectified the very next day. As for the incident in July, DSD subsequently consulted five trade associations representing the shops in the area and decided that *Flood Watch* would issue warning when a Rainstorm Warning Signal was hoisted, regardless of tide level.

4. For the long term, DSD was constructing stormwater intercepting drains and a pumping station for completion in 2009.

Observations and Conclusion

5. Following the unhappy experience of the two incidents, DSD consulted concerned parties and reviewed the arrangement. This was a sensible move.

6. *Flood Watch* was well-intentioned as a measure for interim relief to minimise loss suffered by residents and shopkeepers from flooding. However, it needed better remedy and DSD was undertaking long-term drainage improvement to rectify the situation.

7. Given DSD’s proactive efforts, The Ombudsman decided not to initiate a full-fledged direct investigation. We would monitor developments.

Annex 13 Summaries of Selected Direct Investigation Assessments

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND LANDS DEPARTMENT ("Lands D")

Case No. OMB/DI/153

Management of Non-Commercial Publicity Materials on Roadside

(Assessment commenced on 22 December 2005 and completed on 23 August 2006)

Proliferation of Publicity Materials

Proliferation of non-commercial publicity materials on roadside caused sightline obstruction, thus risk to pedestrians and to vehicular traffic. Dilapidated roadside displays constituted eyesore detrimental to the image of Hong Kong as a world-class city. Public criticism of the situation had been reported in the media from time to time.

2. Concerned whether effective measures were in place to regulate such displays, The Ombudsman initiated this direct investigation assessment.

Management Scheme

3. District Lands Offices ("DLOs") of Lands D processed applications and issued written permission for non-commercial displays of Legislative and District Councillors, Government departments and non-profit making bodies at designated spots on Government land under a management scheme. Such permission carried restrictions and conditions on display size and content of the materials, their secure installation and timely removal and road safety aspects.



Joint Operations

4. DLOs and FEHD conducted joint operations periodically to monitor compliance with the restrictions and conditions. FEHD was responsible for removal on the spot of displays at unauthorised locations or beyond the approved period. Removal costs would be recovered. As dilapidated displays were regarded as minor breach, FEHD normally only issued written warnings to demand improvement.

Our Observations and Opinions

5. There was room for improvement in these control measures:

(a) absence of limit on the number of designated spots might breed proliferation;

(b) the effectiveness of written warnings issued by FEHD against dilapidated displays was doubtful;

(c) the long duration and adverse weather in the territory would necessitate imposing requirements for the choice of materials and the maintenance of the displays;

(d) firmer and more frequent prosecution and summonses were necessary for greater deterrent;

(e) separate sets of statistics on removal of commercial and non-commercial publicity materials should be maintained for better management and assessment of the situation; and

(f) the amount of costs recovered was far too small for the resources and staff efforts involved: viz with 6,723,540 items of unauthorised publicity materials removed and $29,000 recovered in 2003/04; and 7,184,736 items removed with $275,000 recovered in 2004/05.

Conclusion and Suggestions

6. As Lands D and FEHD had taken steps to tackle the problem, The Ombudsman considered a direct investigation not warranted. Nevertheless, The Ombudsman recommended that Lands D and FEHD should:

(a) consider setting a cap on the number of designated spots for non-commercial displays;

(b) re-examine current criteria for selection of designated spots;

(c) consider the requirement for the use of durable or standardised materials for displays;

(d) introduce a provision to require proper maintenance of displays;

(e) include dilapidated displays as targets for removal in joint operations;

(f) step up removal of dilapidated displays after spells of adverse weather;

(g) maintain separate statistics for removal and cost recovery actions;

(h) step up efforts for cost recovery; and

(i) reconsider the practice for summonses and prosecutions.

7. Lands D and FEHD accepted our suggestions. This Office would monitor implementation of the suggestions.

HONG KONG HOUSING SOCIETY ("HKHS")

Case No. OMB/DI/154

Tenants' Obligations under Senior Citizen Residences Scheme

(Assessment commenced on 18 January 2006 and completed on 20 November 2006)

Background

The Senior Citizen Residences Scheme operated by HKHS is a pilot initiative for middle-income elderly persons. There are two such estates, one in Tseung Kwan O and the other in Ngau Tau Kok. Media reports in December 2005 alleged that apart from payment of entry contribution, tenants had to bear the maintenance costs of their units and pay high fees for various services. The Ombudsman was thus concerned whether measures are in place to inform prospective tenants properly of their obligations.

The Scheme

2. The Scheme operates on three key components, namely:

"Lease for Life"

No monthly rental is payable. The tenant pays an entry contribution fee in return for a life-long lease. Upon the tenants' death or voluntary termination of the lease, the tenure will revert to HKHS, with the residual amount refunded to the tenant or his/her estate.



"One-stop Service"

The tenant enjoys a range of services covering property management, basic care and optional features. The management agent of the estate provides basic care to tenants at a charge.

"User-pays" Principle

The tenant has to make non-periodic payments, such as management fee advance payment and management fee deposit, and periodic payments such as monthly management fee and monthly charges for basic care and for the optional services. Further, tenants are responsible for the maintenance and repairs of their own units.

Our Observations and Comments

3. The Scheme, based on the "user-pays" principle, clearly aims to provide a form of tenancy fundamentally different from the usual public rental housing and residence in elderly homes. However, partly due to its novelty, HKHS must make extra efforts to spell out clearly what the Scheme entails, especially in terms of payments.

4. On Open Days, HKHS provides prospective tenants with a fact sheet in Chinese on the facilities and services available and types of charges payable. Staff also explain salient points of the Residential Lease on flat selection and during Orientation Days. However, we found that the explanatory materials mentioned the "user-pays" principle only briefly and nothing about tenants' obligations for maintenance and repairs.

Conclusion and Recommendations

5. We considered that the issue could easily be resolved by providing fuller details of essential information to tenants and prospective tenants. In the circumstances, The Ombudsman decided not to initiate a direct investigation. However, we recommended that HKHS:

(a) revise its application guide and fact sheet to set out comprehensively and clearly the "user-pays" principle and tenants' obligations; and

(b) publish guidelines and formulate procedures for staff on how to explain these matters to prospective tenants.

6. HKHS has revised the application guide. It will ensure that all prospective tenants understand their obligations.

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Cases Concluded under Internal Complaint Handling Programme

STUDENT FINANCIAL ASSISTANCE AGENCY ("SFAA")

Case No. OMB 2006/1613

Recovery of loan – inefficiency in handling late repayment of a loan

Late Recovery Action Alleged

The complainant applied for a loan under SFAA's Local Student Finance Scheme ("LSFS") in 2000 for further studies. Upon completion of his course in 2002, he did not repay the loan. However, it was not until 2006 that SFAA called him to demand repayment with surcharge. The complainant considered SFAA to have been inflexible and inefficient in recovering the loan.

Borrower's Obligations

2. The "Notice of Offer of Financial Assistance under the Local Student Finance Scheme" requires the recipient of a loan to notify SFAA on moving to a new address before fully repaying the loan and interest. Non-receipt of a demand note does not exempt the recipient from repayment. For late repayment by seven days or more, a 5% surcharge would be levied on the outstanding instalment.



3. The complainant did not notify SFAA after he had moved his home but the three demand notes regarding three instalments of the loan sent to his old address were never returned. As the loan remained outstanding, SFAA issued to the complainant and his indemnifier three reminders in July, August and September 2003. However, neither of them responded.

Inadequate Staff

4. However, because of inadequate staff, SFAA had to give priority to those cases of default that involved larger amounts of money. As a relatively small amount was involved, this case was put aside. SFAA staff successfully contacted the complainant by telephone in mid-June 2006 and demanded one-off settlement of the loan together with a 5% surcharge for late repayment.

Our Recommendations

5. This Office recommended that SFAA should deploy enough staff and, where appropriate, recruit additional staff to handle properly cases where the loans have been long overdue and larger amount of money are involved. Public education and publicity should also be stepped up to remind recipients of their obligation for timely repayment and the consequences of default on repayment, such as the levy of a surcharge or the possibility of prosecution.

6. SFAA accepted and implemented the above suggestions. The guidance notes, application forms and information leaflets on LSFS have been revised and website information updated to include a paragraph on the possible legal consequences of non-repayment of loans.

A case of delay

Cases Concluded under Rendering Assistance/Clarification

CORRECTIONAL SERVICES DEPARTMENT ("CSD")

Case No. OMB 2005/2791

Body search and clinical procedure – causing pain and injuries to inmate

The Complaint

The complainant, an inmate of an institution under CSD, alleged that Officer A, a nurse, had conducted vaginal search on her though she had declared her virginity. Officer A had also attempted to force urinary catheterisation on her with the assistance of another inmate. Although she had screamed aloud for over five minutes, they did not stop. The complainant claimed that Officer A's action had injured her.

Vaginal Search

2. Officer A denied having conducted the vaginal search: as she had learned of the complainant's virginity from medical records, she only looked at the outer area of the latter's vagina and performed rectal search on her.

3. The resident doctor, having examined the complainant three days later, also concluded that there was no evidence of forced penetration into her vagina or evidence of torn hymen, as none was seen. He rejected the complainant's request for hymen inspection at an outside hospital, stating that referrals other than medical emergencies had to be made by the management of the institution.

4. CSD considered that evidence to hand did not support the complainant's allegation. However, the Department admitted that the staff members involved should have been more sensitive to her concern and brought it to the attention of senior management earlier.

Urinary Catheterisation

5. According to Officer A, as the complainant had difficulty urinating, she suggested urinary catheterisation to alleviate her discomfort. The complainant verbally consented. However, after examination, Officer A found the complainant's condition not suitable for the

procedure. She, therefore, advised the complainant to drink more water instead. Officer A denied that she had been assisted by any inmate during the examination, or that the complainant had screamed.

6. The Complaints Investigation Unit of CSD had interviewed the other inmates who were around. All indicated that they were not aware of the alleged incident.

7. Whilst maintaining that Officer A was authorised to perform urinary catheterisation on inmates, CSD agreed to review the procedure for urinary catheterisation in the light of different medical opinions on whether it should be carried out without a medical practitioner's prescription.

Our Comments and Suggestions

8. This Office considered that there had indeed been a serious delay in attending to the complainant's request for independent forensic examination of her alleged vaginal injury. Owing to the lapse of time, it was impossible to collect evidence to verify her allegation.

9. To prevent recurrence, The Ombudsman suggested that CSD issue guidelines to instruct staff to report promptly to senior management on receipt of any complaint from inmates about improper body search.

10. As inmates might not be aware of their rights and obligations, The Ombudsman suggested that CSD display notices and/or distribute leaflets on the relevant procedures, exemption criteria and appeal channels in all waiting areas for body search.

11. This Office also suggested that, in normal circumstances, CSD simply order inmates to drink plenty of water to induce urination, instead of performing catheterisation on them.

A case of delay and faulty procedures

ECONOMIC DEVELOPMENT AND LABOUR BUREAU ("EDLB")

Case No. OMB 2006/0565

Safety standards – failing to update the safety standards for toys and children's products

The Complaint

The complainant alleged that EDLB had failed to update the safety standards in the Toys and Children's Products Safety Ordinance ("the Ordinance"), thus making traders liable to prosecution.

Updating Safety Standards

2. EDLB explained that since the enactment of the Ordinance in 1992, the Administration had updated the safety standards four times by notices in the Gazette. In general, new safety standards promulgated by international standards organisations would not be introduced into Hong Kong immediately. EDLB would first consult the industry and relevant bodies and conduct a detailed assessment. In 2003, after such consultation, EDLB proposed to the Legislative Council amendments to the principal ordinance and various safety standards.

Legislative Process

3. Depending on their complexity and the impact on the industry, such amendments had previously taken eight months to two and a half years. However, this time, the process had yet to be completed after more than three years. Hence, EDLB intended to update the safety standards first by notice in the Gazette and simultaneously accelerating the legislative processes. The Bureau expected to complete the updating in the first half of 2007.

Transitional Arrangements

4. Meanwhile, the Customs and Excise Department ("C&ED"), responsible for enforcing the Ordinance, announced transitional arrangements to ease the worries of the industry. If products complied with the latest standards without compromising safety, C&ED would give such cases careful consideration and seek advice from the Department of Justice, instead of taking enforcement action automatically.

Our Comments

5. The Ombudsman considered it unsatisfactory for EDLB to take more than three years to update the safety standards. The Bureau was expected to speed up its processing in future to enhance the business environment.

A case of delay

EDUCATION AND MANPOWER BUREAU ("EMB")

Case No. OMB 2005/2173

Operating primary one class – (a) manipulating school nets, causing problems in planning for timely student enrolment; (b) unreasonably rejecting its application for operating a private primary one class; (c) lack of sincerity in offering assistance; and (d) infringing the privacy of the school

The sponsoring body of a primary school ("School T") complained against EMB not

assigning its primary one places for students from an adjacent school net, rejecting its proposal to operate a private primary one class and other related unreasonable acts.

Assignment of School Places

2. The policy is that if a school net has insufficient primary one places, EMB would assign to that net places from schools in adjacent nets with surplus places. In the 2002/03 and 2004/05 school years, schools in the net adjacent to School T did not have sufficient primary one places, while School T had a surplus. At that time, EMB had assigned places from School T to the adjacent net. However, in 2003/04 and 2005/06, schools in the adjacent net had sufficient primary one places. Assignment of places from School T was, therefore, not necessary. The complainant felt aggrieved that EMB had been manipulating the school nets, merging and separating them at will, thus rendering its school unable to plan for timely student enrolment.

3. EMB explained that the demand for primary one places varied from year to year. Assigning places was, therefore, not a permanent arrangement. The Bureau would consult the schools involved every time and places would be assigned only with the schools' agreement. Given the tight schedule, EMB would act on verbal confirmation from schools. No written record would be issued or made. In the present case, EMB maintained that it had telephoned School T in 2002/03 and 2004/05 and obtained the principal's verbal agreement for places to be assigned. However, School T denied this.

4. In the absence of independent evidence, this Office could not verify the facts. Yet, it was clear that the absence of any written record on the verbal consultation or agreement was not a proper practice.

Operation of Private Class

5. The complainant said that while advising School T to come under the Direct Subsidy Scheme, the Bureau had questioned the quality of the school and verbally rejected its application for operating a private primary one class. EMB explained that the proposal lacked focus for improvement. The Bureau, therefore, considered School T not equipped enough to operate a private primary one class of good quality.

6. As EMB's decision was a professional judgement, this Office would not comment on it.

Insincere Offer of Assistance

7. When School T enquired about joining the Direct Subsidy Scheme, a member of EMB immediately rejected its application verbally. The Bureau explained that the staff member involved did not reject School T's application but had given professional advice and detailed explanation to the principal. As EMB's version differed from that of the complainant and there was no independent evidence, we could not comment.

Privacy of School

8. The complainant alleged that EMB had given School T's proposal for operating a private primary one class to a newspaper columnist and thus infringed on the privacy of the school. After examining the newspaper article, we found that no school name was mentioned. There was no evidence that EMB had infringed on the privacy of School T.

Final Remark

9. The Ombudsman suggested that EMB review the procedures for assigning places and formulate clear guidelines to remind staff to keep proper records of the results of verbal consultation. Verbal agreement should be followed by letter soon afterwards to confirm the arrangement. EMB accepted and implemented the suggestions.

EDUCATION AND MANPOWER BUREAU ("EMB")



Case No. OMB 2006/1132

Secondary 1 places – unreasonably cutting Secondary 1 places in "other districts" originally allocated to the school net of the complainant's daughter without prior notification

The Complaint

The complainant alleged that without reason, EMB had suddenly cut the Secondary 1 ("S1") places of English-medium schools in "other districts" originally allocated to her daughter's school net in the coming school year. This reduced the chances of her being admitted to an English-medium school.

Allocation of S1 Places

2. Under the Secondary School Places Allocation ("SSPA") System, each year EMB would arrange for Primary 6 ("P6") students to go on to secondary education in their own districts as far as possible. Should S1 places for Central Allocation be short in any district, EMB would reallocate surplus places from nearby districts to meet the demand. In this context, places in some secondary schools of "other districts" would supplement those in the district with the shortfall and be included in the latter school net. However, the secondary schools to be included from "other districts" and the number of places to be reallocated would vary from year to year depending on the actual situation.

Uncertainty of Demands

3. Under the existing procedures, each primary school has to inform EMB the personal particulars of its P6 students at the beginning of a school year and secondary schools have to estimate their number of S1 classes and places to be offered in the next school year. This is to enable EMB to project the overall demand and supply of S1 places in all school nets.

4. However, it is just a preliminary assessment and would not necessarily reflect the actual situation of a school net at the Central Allocation stage. EMB has to wait until March each year to make a more accurate projection of the actual demand on the basis of data collected after the deadline for applications for "cross-net" allocation and disposal of Discretionary Places since December. Thus, EMB could not possibly confirm the changes in the number of places at the beginning of each SSPA cycle. It is not until March that EMB could confirm the approved number of S1 classes in the next school year to start any reallocation necessary.

5. In late April each year, EMB would formally distribute the S1 Choice of Schools Form together with the Secondary School List to parents of P6 students participating in SSPA.



EMB's Improvement Measures

6. As some parents might not realise that the schools or number of SI places offered in "other districts" would vary from year to year, EMB would explain more clearly to parents in its future briefing sessions and notices on SSPA.

7. Since parents wish to know about reallocation as early as possible, EMB would expedite disclosing such information to students and parents so that they are aware of the overall situation before receiving the Secondary School List in April. Meanwhile, EMB would also review the 18 secondary school nets, which had been adopted for many years, inter alia to study the feasibility of expanding or merging school nets to give parents more choices of schools.

No Maladministration

8. The Ombudsman found that EMB had clearly stated that the number of schools in "other districts" might vary from year to year subject to the actual supply and demand of S1 places in individual school nets. EMB had processed the allocation in accordance with established policies and procedures. There was no maladministration.

ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB"), ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT ("EMSD"), ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2006/0511-0514

Gas filling stations – failing to regulate effectively the operation of dedicated liquefied petroleum gas filling stations and to ensure adequate service at stable prices

The Complaint

A transport workers' union alleged that ETWB, EMSD, EPD and TD had failed to regulate effectively the operation of dedicated liquefied petroleum gas ("LPG") filling stations and to ensure adequate LPG filling service at stable prices.

Introduction of Dedicated LPG Filling Stations



2. Since 2000, a number of sites with waiver of premium had been awarded to contractors through tenders for the provision of dedicated LPG filling stations. ETWB was responsible for policy matters whilst EMSD was responsible for enforcing the contract terms and conditions and supervising the design, construction, operation and maintenance of dedicated LPG stations. EMSD was also responsible for collecting data to determine the ceiling prices at those stations on the basis of the pricing formula specified in the contracts.

3. As international LPG prices had been relatively stable in the past, it was provided in the contracts that the ceiling prices at dedicated LPG stations would be adjusted once every six months on the basis of international LPG prices in the preceding six months. Nevertheless, the contracts also provided that the Administration and contractors could review the frequency of such adjustment.

Imbalance due to Drastic Rise in Prices

4. Between September 2005 and February 2006, international LPG prices soared drastically. Non-dedicated LPG stations quickly increased their prices whilst the dedicated ones had to wait until the next adjustment before the ceiling prices could be raised. As a result, prices at dedicated LPG stations were cheaper by 70 to 90 cents per litre. The demand at dedicated stations rose so rapidly that it exceeded the contractors' supply. Thus resulted in long queues of vehicles waiting for gas filling.

5. Against this background, the Administration decided after review that from 1 February 2006, the ceiling prices at dedicated LPG stations would be adjusted once a month. This narrowed price gap between the dedicated and non-dedicated LPG stations and the "long queues of vehicles waiting for gas filling" disappeared.

Our Comments

6. The long queues of vehicles at dedicated LPG stations were not because of ineffective regulation but rather drastic increase in international LPG prices. However, as prices at dedicated stations could not be adjusted quickly, gas there became much cheaper relatively and so demand far exceeded the supply. In this connection, the Administration had subsequently increased the frequency of price adjustment to allow dedicated stations to follow changes in the market more closely. This should rectify the imbalance in supply and demand.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2006/0286

Licensing issue – impropriety in processing an application for food factory licence

Full Licence Not Granted

Operating a cake shop under franchise, the complainant had obtained a provisional food factory licence valid for six months, by the end of which he should have obtained a full licence upon meeting all licensing requirements.

2. For the purpose of issuing the full licence, FEHD staff inspected his shop several times and asked him to rectify various problems there. When the provisional licence was due to expire in less than a month, he was told to remove a pre-existing "step encroachment" at the shop front before he would be issued a full licence. Considering it difficult to complete the works before the deadline, he decided to close his shop.

FEHD's Responsibility in Licensing

3. FEHD is the licensing authority on food businesses. It has established departmental polices and procedures on processing licence applications for different categories of food premises. Applicants are responsible for ensuring compliance with the law with regard to the condition of their food premises. Upon production of the requisite certificates of compliance on specified essential requirements, a provisional licence will be issued so that the applicant may start business pending the issue of a full licence.

Unauthorised Building Works ("UBWs") at Food Premises

4. In the course of processing the complainant's application, FEHD staff inspected the subject premises several times and found that all licensing requirements for the issue of a full food factory licence had been complied with. However, during the final inspection, a more senior officer spotted a step at the shop front and suspected it to be an UBWs.

5. The complainant was informed on the spot and the matter was referred to the Buildings Department ("BD") for urgent comments. BD inspection subsequently detected

that in addition to the step encroachment, there was also an unauthorised canvas canopy. BD, therefore, objected to the issue of a licence as these illegal features posed a risk to public safety. The complainant then applied to FEHD and BD respectively for renewal of the provisional licence and exemption from compliance with the removal requirements. Both departments turned down his request and he eventually withdrew his application for a full licence.

Improvement Measures by FEHD

6. FEHD acknowledged that staff had failed to detect the step encroachment earlier and that there had been a previous application for a general restaurant licence at the premises when BD had also required removal of the step. In this connection, FEHD introduced a new licensing policy to address the problem of UBWs in food premises. With effect from 18 April 2006, applicants would be required to submit certification by an authorised person or a registered structural engineer that the premises are free of UBWs. Otherwise, FEHD would not issue a licence.

Our Comments and Conclusion

7. In processing the application, FEHD had followed prescribed procedures. The fact that FEHD staff failed to detect the step and the canopy earlier did not absolve the complainant of responsibility to make good the situation before a full licence could be issued. The complainant was also to include all building works of the premises in the layout plan submitted with his original licence application.

8. Nevertheless, we considered that the Department should enhance training for licensing staff for detection of UBWs at premises intended for food businesses. Staff should also check previous applications relating to the same premises for any objection or withdrawal due to presence of illegal works. FEHD accepted our suggestions.

A case of omission

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND HOME AFFAIRS DEPARTMENT ("HAD")

Case Nos. OMB 2006/0622; OMB 2006/1109

Complaint handling – delay in handling a complaint, causing the complainant to suffer from extended noise and hot air nuisance

Noise and Hot Air Nuisance

A large air-conditioning ("A/C") unit of a ground-floor restaurant in the complainant's

building caused noise and hot air nuisance. He had complained to FEHD and HAD several times. However, as both departments delayed in handling the case, the problem persisted.

2. The complainant alleged dereliction of duty on the part of FEHD licensing staff, as the restaurant had been allowed to install the A/C unit on the external wall. When the restaurant operator failed to observe the requirement to dismantle the unit, FEHD staff shifted the responsibility to other departments. Meanwhile, the complainant was dissatisfied with the temperature test taken in his flat and the Department's failure to follow up actively his complaint against the restaurant for causing obstruction to the pavement.

3. The complainant also considered HAD to have failed in its duty to assist the owners and Owners' Corporation ("OC") of his building in resolving the building management problem. Its staff had delayed handling his complaint and influenced the OC's decision.

FEHD Action Appropriate

4. This Office considered FEHD to have taken appropriate action on the complaint about hot air and noise nuisance. Each time its investigation was completed, staff would inform the complainant of the findings. There was no maladministration in its handling process.



5. As regards the alleged dereliction of duty, we found that the staff concerned had never approved the installation of the A/C unit and committed no maladministration in issuing the restaurant licence. He had also properly followed up the complaint. However, as the relocation of the A/C condenser involved the decisions of several departments as well as the OC, this had led the complainant into believing that FEHD was shirking its responsibility.

6. With regard to the allegation that the temperature test conducted in his flat was inaccurate, it fell within the FEHD's professional judgement and not an administrative matter within our jurisdiction. We would not comment on this. Moreover, FEHD had instituted prosecution against the restaurant operator twice for causing obstruction to the pavement.

HAD Coordinating Role

7. As for the allegation against HAD, this Office considered that the Department had specifically followed up the complaint in accordance with the relevant legislation. It had played its role as coordinator to provide appropriate assistance while the staff concerned had duly performed his duty. The restaurant operator had twice altered the exhaust unit of the A/C condenser to meet the requirements of FEHD and to reduce the nuisance to the complainant. As the OC opposed the position for relocating the condenser, negotiation had to start afresh for a consensus. That might have led the complainant into believing that HAD had influenced the OC's decision and delayed in handling the case.

GOVERNMENT LOGISTICS DEPARTMENT ("GLD")

Case No. OMB 2006/1004

Release of auctioned goods – failing to release goods to the holder of the Release Note

The Complaint

A company had successfully bid for some goods on GLD auction. It immediately resold the items to the complainant. When the complainant went to collect them from GLD with the original GLD Release Note and the company's authorisation letter, GLD staff found that the English and Chinese descriptions of the goods did not tally. GLD, therefore, did not release the goods .

2. Afterwards, GLD improperly released the goods to the company instead. The complainant felt aggrieved as he was not given goods for which he had paid and had the original Release Note as well as an authorisation letter.

Comments from GLD

3. GLD explained that its contractual relationship was with the company, which had won the bid. Any relationship between the company and the complainant had nothing to do with Government. When the company asked for the goods but was unable to produce the Release Note, GLD issued it with a replacement Release Note and subsequently the goods.

Impropriety Established

4. This Office considers that if a person is able to produce the original GLD Release Note and an authorisation letter from the successful bidder, GLD is obliged to release the goods to that person. In this case, before issuing a replacement Release Note to the company, GLD had already learned about its transaction with the complainant. The Department also knew that the original Release Note was being held by the latter. It was, therefore, unreasonable of GLD to issue a "replacement" Release Note and then to release the goods to the company instead.

5. As this appeared to be a systemic issue, The Ombudsman decided to further examine GLD's procedures after concluding the complaint case. This is underway.

A case of wrong decision and faulty procedures

HOME AFFAIRS DEPARTMENT ("HAD")

Case No. OMB 2005/4076

Complaint handling – delay in handling a complaint against the Management Committee of an Owners' Corporation

The Complaint

The complainant alleged that a District Office ("DO") under HAD had delayed handling his complaint against the Management Committee ("MC") of the Owners' Corporation ("OC") of his residential estate.

OC's Late Reporting of Changes

2. At an Annual General Meeting of the OC on 6 February 2004, MC members were appointed. On 27 February, the MC met and appointed office-bearers. The minutes of that MC meeting were confirmed on 30 April 2004. The management company of the estate reported the changes of OC particulars to the Land Registry ("LR") on 17 May 2004.

3. The Building Management Ordinance ("BMO") stipulates that the MC Secretary shall **within 28 days** notify LR to update OC's registered particulars. As the complainant considered the MC's new term of office to be effective from 27 February 2004 (i.e. the day of the MC meeting), he alleged that the management company had been late in reporting to LR and the MC Secretary had, therefore, breached the Ordinance. He wrote repeatedly to DO requesting prosecution of the Secretary.

DO's Response

4. DO attributed the incident to the lack of understanding of the BMO on the part of the MC and the management company and so explained the provisions to them. DO also informed the complainant that while the Home Affairs Bureau is the Authority for the BMO, the decision whether or not to prosecute rests with the Department of Justice ("DoJ").

HAD's Delay

5. The complainant asked DO on 9 May 2005 whether the Authority would take legal action against the MC Secretary. However, it was not until the end of December 2005 that HAD consulted DoJ and then wrote to the complainant in May 2006 that DoJ had advised against prosecution.

6. We consider such delay unacceptable.

Our Suggestion

7. HAD should instruct staff to follow up complaints actively and, if legal advice is required, consult DoJ as soon as possible. In addition, HAD should explain the proper procedures clearly to complainants.

8. The Department agreed.

A case of delay

HOME AFFAIRS DEPARTMENT ("HAD") AND LANDS DEPARTMENT ("Lands D")

Case Nos. OMB 2006/0414-0415

HAD and Lands D – response to enquiry – failing to reply to an enquiry concerning a burial ground for indigenous villagers

HAD – provision of information – failing to provide the full minutes of a meeting

The Complaint

The complainant, an indigenous villager of Village A, wrote to the local District Office ("DO") under HAD in March 2005 for help in re-allocating to Village A a burial ground ("Ground B") , which he claimed to have been a traditional burial site for the village. He also asked DO for a copy of the full minutes of a 1983 meeting on burial policy. He copied the letter to a District Lands Office ("DLO") under Lands D.

2. Allegedly, neither office replied to his letter and DO did not give him the full minutes requested.

Burial Policy and Procedures

3. Eligible indigenous villagers are allowed hillside burial in permitted areas and District Officers in the New Territories are empowered to issue such burial permits. On the other hand, the approval and setting of boundaries for such burial grounds and relocation of existing ones are handled by Lands D. At an inter-departmental meeting in November 2002, it was further agreed that Lands D be responsible for processing applications for new burial grounds and extension of existing ones.

Action by DO and DLO

4. DO explained that it had in fact issued an interim reply to the complainant within a month. It had subsequently arranged a site inspection with the villagers concerned (including the complainant) and DLO staff and pointed out to the villagers the actual boundaries of Ground B.

5. DLO had also sent an acknowledgement to the complainant as well as telephoning him and was told that a reply was not necessary.

6. Meanwhile, DO and DLO debated repeatedly over which department should handle applications for relocation and extension of existing burial grounds and which should follow up the complainant's request. However, no agreement was reached.

Privacy Protection

7. As for the minutes of the meeting, DO in fact had sent the complainant an extract of those parts relating to Village A. This was to protect the privacy of other parties.

Our Comments

8. Despite the clear division of responsibilities laid down at the inter-departmental meeting, DO and DLO maintained different views in dealing with this case. Regrettably, they did not seek a steer from the policy bureau, thus hindering progress. This Office considered that the two departments should have followed the established policy and procedures and improve their communication.

9. As regards the complainant's request for the minutes of the 1983 meeting, we considered it appropriate for DO to send him only the relevant extract for privacy protection reasons.

A case of poor inter-departmental communication and failure to follow procedures

HOME AFFAIRS DEPARTMENT ("HAD") AND LANDS DEPARTMENT ("Lands D")

Case Nos. OMB 2006/1021-1022

Direction signs – mishandling an application for short-term tenancy for erecting direction signs

The Complaint

The complainant, a charitable institution, applied to a District Office ("DO") under HAD and a District Lands Office ("DLO") under Lands D for permission to erect three direction signs to guide the public to its welfare unit at a secluded location in a village. Allegedly, DO and DLO had failed to inform it at the outset that policy support was required for the grant of a short-term tenancy ("STT") for erecting such signs, thereby causing loss of its time and efforts.

Proper Action by HAD

2. The role of DO was to refer such applications to DLO for consideration. We noted that DO had duly advised the complainant to seek approval from DLO. As social welfare bodies and their services were not within HAD's purview, DO was not in a position to give policy support to the application. There was, therefore, no maladministration on HAD's part.

Allegation against DLO not Evidenced

3. DLO claimed that its staff had informed the complainant during a telephone conversation that STTs at nominal rent might be granted to non-profit-making bodies subject to support from the appropriate policy bureau. This was contrary to the complainant's allegation. In the absence of independent evidence, we could not draw any conclusion.

Miscommunication between Departments

4. Lands D explained that DLO had in fact consulted the Social Welfare Department ("SWD"), as the complainant's application concerned the latter's policy bureau, the Health, Welfare and Food Bureau ("HWFB"). However, since SWD did not support the application, DLO had to reject it.

5. SWD advised this Office that DLO had indicated that the proposed direction signs were for guiding the public to the **village**. As the application was apparently not welfare-related, it replied to DLO that it had no comments. Since then, SWD had not received any further enquiries on the matter.

6. However, the DLO staff member concerned claimed that he had clearly explained to SWD that the signs were for directing the public to a **welfare unit**. Furthermore, after receiving SWD's reply, he had called SWD to reiterate the purpose of the signs, emphasising that the application could not be processed without SWD support. There was, however, no record of his action above.

Conclusion

7. The miscommunication had indeed resulted in a delay in the processing of the complainant's application. Given that this matter involved a number of offices, it would have facilitated processing if all departments concerned had taken the initiative to meet with the complainant together to clarify the relevant issues. In particular, Lands D should remind its staff to exercise due care in handling applications and seeking comments from relevant departments.

Latest Development

8. SWD has re-examined this case and HWFB given policy support to the grant of an STT at nominal rent to the complainant.

A case of miscommunication and delay

HONG KONG OBSERVATORY ("HKO")

Case No. OMB 2006/2412 and others

Tropical cyclone warning – impropriety in issuing Strong Wind Signal No. 3 when Typhoon Prapiroon swept through Hong Kong

Tropical Cyclone Prapiroon

Prapiroon swept through the territory during 1-4 August 2006 and the highest warning signal then issued was Strong Wind Signal No. 3. The complainants, however, maintained that Signal No. 8 should have been hoisted because many areas experienced gale force wind. They also considered the current tropical cyclone warning signals system inflexible and outdated as it only took into account the wind speeds in areas on both sides of the Victoria Harbour but not those in other areas. Furthermore, HKO even withheld information about the track of Prapiroon in order to avoid an impact on the economy.

Tropical Cyclone Warning Signals System

2. Tropical cyclone warning signals are issued to alert the public to the impending threat a tropical cyclone may pose to the territory. Real time or expected sustained wind speed in the Victoria Harbour is used as the criterion when deciding whether Signal No. 3 or No. 8 should be issued. Wind speed outside the Harbour area is not part of this criterion.

3. HKO maintained that, given the complex features of the Hong Kong terrain, no single location can speak for all areas of the territory in terms of wind speed and direction. Since the areas on both sides of the Victoria Harbour have long been the centre of social and economic activities in Hong Kong, the wind speed there is used as an objective index for the system.

4. Data collected by HKO on 3 August showed that the ten-minute mean wind speed in the Harbour area hovered below 50 kilometres per hour for the whole day. This was way below gale force.



System Reviewed and Service Enhanced

5. Whenever a tropical cyclone sweeps through Hong Kong, HKO will conduct internal review of the signals system and its operation. Public feedback will be taken into consideration. A public opinion survey conducted in 2003 showed that over 94% of the respondents considered the system to satisfy their needs. At the end of that year, an HKO review concluded that the wind speed in the Victoria Harbour should remain as the criterion for issuing Signal No. 3 or No. 8.

6. HKO has enhanced weather information services via different channels so that the public may have a better idea of the weather condition including wind speeds and directions in their districts.

7. HKO considered it unfair for the complainants to compare the actual data collected after the typhoon with its meteorological forecast and thereby comment that it had "withheld information about the track of Prapiroon". The Department stressed that the warning signals had been issued according to established criteria and procedures. The "impact on the economy" was not a consideration.

Our Comments

8. HKO has from time to time reviewed the signals system and its operation. We found no evidence that the Department was too rigid or the system outdated.

9. In view of the inadequacy of the single numerical warning signals system in reflecting different wind speeds in different areas when a typhoon strikes, this Office considered that HKO should take into account public opinions when reviewing the system. It should also step up publicity to enhance public understanding of the different warning signals. When higher wind speeds in individual districts are forecast or detected, HKO should disseminate the information promptly to enable residents in those districts to take appropriate precautions.

HOUSING DEPARTMENT ("HD")

Case No. OMB 2006/0124

Estate management – (a) denying responsibility for the complainant's injury when she tripped over some bolt heads protruding from the ground in a public housing estate; and (b) delay in replying to the complainant's claim for compensation

Complainant Sought Compensation

In April 2004, the complainant was injured when she tripped over some bolt heads protruding from the ground in the shopping area of a public housing estate. She alleged

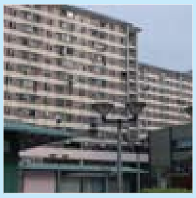
that the bolt heads had been left there after HD's removal of a litter bin several years ago. Her daughter, therefore, complained to HD and sought compensation on her behalf in mid-May.

Claim Referred to Loss Adjuster

2. HD referred the case to the loss adjuster ("LA") of its insurer for assessment of the Department's public liability for the incident. LA wrote to the complainant in early January 2005 that HD had no legal liability and, therefore, need not pay any compensation. HD also claimed having no record of installing or removing a rubbish bin at the location and no knowledge of the bolt heads being there.

Follow-up by Complainant's Daughter

3. In late January, the complainant's daughter wrote to HD again to express dissatisfaction. In May, she sought help from a Legislative Councillor to urge the Department to follow up the case. LA, on behalf of HD, sent a formal reply to the Councillor in late November, maintaining its conclusion. However, it did not reply to the complainant's daughter, thinking that the Councillor would inform her.



Our Observations and Comments

4. The Hong Kong Housing Authority has ultimate responsibility for the proper management of its property, including the shopping area in question. As its executive arm, HD should not shrug off its liability for the accident. Nevertheless, this Office would not comment on the complainant's claim for compensation as it is outside our jurisdiction.

5. As this case involved insurance and compensation, it was reasonable for HD to refer it to LA. Nonetheless, as the complainant's daughter had directed her queries to the Department, LA should have replied to her or at least given her a copy of its reply to the Councillor. HD should remind all its agents to take note and avoid recurrence of such omission.

6. We noted that the Councillor had subsequently informed the complainant of LA's reply.

A case of denial of responsibility and lack of response to complainant

Annex 14 Summaries of Selected Cases Concluded by Preliminary Inqueries

LANDS DEPARTMENT (“Lands D”)

Case No. OMB 2006/0608

Licence matter – revoking a Government Land Licence



The Complaint

The complainants alleged that a District Lands Office (“DLO”) under Lands D had revoked their Government Land Licence without reasonable notice.

Complainants’ Misdoings

2. The complainants’ residence was on a site under a Government Land Licence. As DLO detected unauthorised buildings works (“UBW”) and environmental hygiene problems from dogs there, it repeatedly wrote to the complainants demanding rectification; but in vain.

3. DLO then wrote to the complainants requesting entry for a site inspection, or it would revoke the Licence by giving three months’ notice. The complainants asked for postponement of the inspection. DLO did not accede, as it had made similar requests many times but to no avail.

4. However, on the scheduled date, DLO staff were still denied access to the site. Inspection in the vicinity confirmed the continuing existence of the UBW. DLO, therefore, revoked the Licence by serving the complainants three months’ notice. They were also required to clear the site.

5. Through a District Councillor, the complainants requested DLO to suspend action and to regularise the situation by short-term tenancy. DLO replied that the policy did not allow UBW to continue to exist through a short-term tenancy. Meanwhile, the complainants complained to Lands D headquarters. The Department endorsed DLO’s action. The complainants were again urged to cease illegal occupation of the land and to demolish the UBW.

6. Eventually, the complainants cleared the site and asked DLO to re-issue the Licence. Both parties agreed to discuss terms.

Our Comments

7. It is clear that DLO had acted reasonably. In fact, it had shown great tolerance for three years before revoking the Licence.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2006/0021

Art stalls assessment – (a) discrimination against Chinese culture; and (b) unfairness in accepting a late application

The complainant applied, without success, to offer Chinese calligraphy service in a certain phase of the Arts Corner organised by LCSD at a park. Later, he learned that no stall offered such service in that phase. He alleged that LCSD had discriminated against traditional Chinese culture and had acted unfairly in accepting a late application.

Assessment Procedures

2. Ten stalls offering different arts services such as painting, photography, Chinese calligraphy, portrait sketching and traditional Chinese folk art at the Arts Corner were open to application. Interested individuals and subvented non-governmental organisations could submit an application form together with credentials of expertise and samples of art works to the park's Management Office during a specified period. The application would then be sent to a six-member vetting panel ("Panel") comprising District Councillors and LCSD representatives for assessment.

3. The Panel would assess applications according to the nature and variety of the proposed service, as well as the standard and popular appeal of their samples. The ten applicants with the highest scores would each be allocated a stall at the Arts Corner for 12 months. Stalls for those with the same score were determined by drawing lots.

LCSD: No Discrimination or Imparity

4. Whilst the Panel members were different for each phase of the Arts Corner, applications would be assessed according to established criteria and all artistic forms considered on an equal footing. On the other hand, LCSD did not require that one application must be chosen for each and every variety. Emphasis would be placed on the standard of the service and works of art to be provided. Discrimination against traditional Chinese culture was thus out of the question.

5. The acceptance of a late application was, according to LCSD, due to misunderstanding. Staff at the Management Office mistook it for information supplementary to an earlier application. When the application was subsequently chosen by the Panel, it was found to have been a late submission. The applicant was disqualified at once and another chosen to take his place. LCSD, whilst admitting negligence by staff, considered that the incident had resulted in no unfairness to the other applicants.

No Unfairness Observed

6. We found no evidence of any unfairness in the criteria, methods and procedures for assessing applications for stalls at the Arts Corner. Records showed that whilst there

was no stall offering Chinese calligraphy service in that phase, two applications offering traditional Chinese folk art had been chosen. So, the Panel did not discriminate against Chinese culture.

Improvement Introduced

7. Meanwhile, LCSD had reviewed and improved the procedures for handling applications for stalls at the Arts Corner. A revised brochure setting out clearly the assessment criteria and composition of the Panel would be given to applicants in future.

MARINE DEPARTMENT ("MD")

Case No. OMB 2005/4228

Management of ferry terminals – failing to partition off the smoking areas or to install separate ventilation systems there





The Complaint

The complainant alleged that there was no partition between the smoking and no smoking areas in the departure concourse of a ferry terminal. Separate ventilation systems were not in place either, resulting in his being forced to be a passive smoker. He complained against MD for poor management of the terminal.

Smoking Areas in Ferry Terminals

2. The terminal, opened in the 1980s, was not among the no smoking areas designated by law at that time. Following a legislative amendment in the 1990s, seven smoking areas were set up there. In 2003, MD reviewed the no smoking arrangements in all ferry terminals and reduced the number of smoking areas in the said terminal to five. However, due to architectural constraints, three of them were not enclosed. MD staff patrolled the departure lounge regularly. Moreover, the Tobacco Control Office under the Department of Health found the arrangements satisfactory.

3. As Government was studying the feasibility of introducing a total ban on smoking in cross-boundary ferry terminals, MD did not plan to construct smoking rooms in the terminal. However, it had cancelled the smoking area closest to the main departure waiting hall and set up movable partitions at the other two "open" smoking areas. The ventilation at those areas had also been improved.

Reasonable Measures Taken

4. This Office considered MD to have taken proper and reasonable anti-smoking measures, having regard to the architectural design and constraints in the terminal. With the latest amendments to the law banning smoking in all indoor public places, this problem has been completely eliminated.

OFFICIAL RECEIVER'S OFFICE ("ORO")

Case No. OMB 2005/3218

Bankrupt's estate – (a) failing to put the sale proceeds of a property into an interest-bearing account; and (b) improper handling of the case by staff

The complainant alleged that ORO had failed to put the sale proceeds of a property jointly owned by him and his bankrupt brother into an interest-bearing account, resulting in his loss of interest, and that ORO staff had mishandled the case.

Complainant Sought Refund

2. The complainant sold the property in 2000. His solicitors handed over his brother's 50% share of the proceeds to ORO. However, contending that his brother was merely a registered owner and had no beneficial interest in the property, the complainant requested ORO to refund the money to him.

ORO Views Varied

3. On receipt of the money, ORO saw it as belonging *prima facie* to the brother and, therefore, rejected the complainant's request. Unless the complainant could prove his claim, ORO must act in accordance with the Bankruptcy Ordinance. This meant depositing the money into the bankruptcy account with all interest earned accruing to public revenue, and not the bankrupt individual's account or estate.

4. The case was later taken over by another ORO officer who considered that the proceeds might not constitute the bankrupt's assets. This officer arranged for the money to be deposited in an interest-bearing account pending resolution of the dispute between the complainant and ORO. The proceeds were subsequently refunded to the complainant with interest.

5. As for the alleged improper handling of the case, ORO apologised to the complainant with a detailed explanation.

ORO to Seek Court Direction

6. The Ombudsman considered the crux of the matter to be whether the money belonged to the bankrupt person. If not, ORO would have to receive that money as a trustee and should ultimately be returned to the rightful owner with interest. This matter involved legal considerations and the authority of interpretation was with the court. We, therefore, suggested that ORO seek direction from the court in cases where there was a dispute with third parties over the status of some asset.

POST OFFICE ("PO")

Case No. OMB 2005/4260

Post Office box – allowing a stranger to use the complainant's home address and telephone number for renting a Post Office box

Allegedly, PO had allowed a stranger ("Madam A") to use the complainant's home address and telephone number for renting a Post Office box ("PO box").

Renting of PO Boxes

2. PO boxes may be rented by residents aged 18 or over. Applicants are required to provide their HK identity card number, telephone number and residential or correspondence address. PO will verify the address by a letter of notification for payment of rental and collection of the key. PO box renters are required to notify the Postmaster General of changes of address.

One-stop Service



3. To cater for urgent requests, PO has a "One-stop Service to Customers Applying for PO Box", which required only verification of the applicant's ID card details but not the correspondence address. The key would be handed over right away upon payment of the rent.

4. In this case, the application was processed through the One-stop Service. Madam A was accompanied by the complainant's brother, who provided the complainant's address and telephone number to support the application. Upon receipt of this complaint, PO obtained Madam A's own correspondence address for renting the PO box.

Improvement Measures

5. PO subsequently revised its procedures for handling applications through the One-stop Service. Applicants are also required to provide proof of address such as rate demand notes or utility bills. Meanwhile, to detect any change of address for renters not notifying the Postmaster General, PO would implement new measures, i.e. issuing renewal notices or confirmation receipts to renters' registered address and seeking clarification on "returned" notices.

A case of faulty procedures

STUDENT FINANCIAL ASSISTANCE AGENCY ("SFAA")

Case No. OMB 2006/2183

Loan application – disparity in treatment of applicants

The complainant alleged that under SFAA's Non-means Tested Loan Scheme, applicants who had to pay their tuition fees in foreign currency were required to make the payments first. This caused hardship to applicants with financial difficulties.

Loans in Foreign Currencies

2. SFAA explained that as the loans were valued in Hong Kong dollars, applicants who had to pay their fees in foreign currency should pay first and then submit the bank receipt with exchange rate(s) with an application for a loan in Hong Kong dollars. If an applicant had financial difficulties and could provide supporting evidence, SFAA would consider the special circumstances of the case and decide whether or not to issue a cheque for the loan in foreign currency. However, the processing time for such applications would be longer.

Our Comments and Suggestions



3. This Office believed that SFAA was not deliberately making things difficult for applicants paying tuition fees in foreign currency. However, SFAA should treat all applicants equally. Requiring supporting evidence only from those applicants who could not afford to pay the fees first would contravene the original intent of this being a "non-means tested" scheme. As such applications are more complicated and processing is more time-consuming, this Office suggested that SFAA set a longer lead-time, charge a higher administrative fee and deploy more staff to process applications during peak periods. Meanwhile, SFAA should discuss with departments concerned to streamline the work procedures.

4. SFAA accepted our suggestions and expected to accept officially loan applications requesting the issue of cheques in foreign currency from August 2007.

A case of faulty procedures

TRANSPORT DEPARTMENT ("TD")

Case No. OMB 2005/3585

Illegal bus service – (a) inability to curb the problem of illegal residential coach service; and (b) failure to inform the complainant proactively of the progress of its investigation

The Complaint

Since 2004, the complainant had repeatedly telephoned TD to report the operation of illegal residential coach service in a private residential estate. However, he saw no improvement and TD never informed him of progress.

TD's Strategy

2. Non-franchised bus service operators must apply to TD for a Passenger Service Licence ("PSL") for each bus and seek approval from the Commissioner for Transport for each kind of service and each route.



3. TD's investigation confirmed that the operator in question had only had a short-term "Contract Hire Service" licence and such service must be free. As it was found collecting fares from individual passengers, the coach service was illegal.

4. In fact, TD had identified, and issued warning letters to, more than one unauthorised coach service operators in the estate concerned. However, three of the operators had ignored the warnings and continued their illegal operation. TD thus decided in April 2005 to conduct inquiries against them. The inquiries were completed in December. The Commissioner decided to either suspend or cancel the operators' PSLs.

5. TD's strategy was to punish illegal operators through inquiries by stopping their operation.

TD's Communication with Complainant

6. The complainant had not disclosed his telephone number until mid-2005. Hence, TD was at first unable to contact him. Nevertheless, the complainant called the Department from time to time and staff informed him of the general position on all occasions.

Our Comments

7. We found TD too slow in taking action. The inquiries took more than a year to complete after receipt of the complaint. TD could also have prosecuted repeat offenders for stronger deterrent impact.

8. As regards its communication with the complainant, TD should have kept him posted of the progress of its investigation without waiting to be asked.

TD's Follow-up Action

9. In November 2005, TD tightened up the PSL conditions, thereby making illegal operation easier to prove and speeding up inquiries. It would also consider deploying more manpower to enhance its efficiency in handling cases and undertook to consult the Transport Tribunal with a view to increasing the number of cases to be heard each month. Where there is evidence of criminal offence, the Department would work with the Police for prosecution.

A case of ineffective control and lack of response to complainant

TRANSPORT DEPARTMENT ("TD")

Case No. OMB 2006/0083

Parking facilities – unreasonably rejecting the complainant's request for providing motorcycle parking spaces

The Complaint

The complainant had requested TD to provide motorcycle parking spaces on a certain street. However, TD repeatedly rejected his proposal without giving detailed explanation why it could not reallocate some of the on-street private car parking spaces for motorcycles.

Response from TD

2. TD had in fact asked the management company of the car park in a public housing estate nearby to consider providing hourly parking spaces for motorcycles. However, the company considered demand inadequate.

3. TD observed that utilisation of the on-street private car parking spaces in the area was quite high. Reallocation of some spaces for motorcycles might give rise to illegal parking of private cars and result in traffic congestion in the vicinity.

Our Observations and Comments

4. We agreed that TD should be prudent in controlling the number of on-street parking spaces. We had no objection to TD requesting the car park management company to consider providing motorcycle parking spaces.

5. However, TD considered the utilisation of the on-street private car parking spaces quite high whereas the complainant alleged it to be very low. The two statements were contradictory. In this connection, this Office had asked TD to substantiate its claim. The

Department subsequently replied that its claim was based only on verbal reports by staff responsible for regular inspections of the traffic condition in that area and not supported by records.

6. In this context, this Office considered TD to be slipshod in its decision not to provide more motorcycle parking spaces. The complainant's allegation against TD for failing to give him a detailed explanation was, therefore, justified.

Comprehensive Surveys Needed

7. As demand for on-street motorcycle parking spaces was on the increase, this Office considered that TD should conduct comprehensive surveys to ascertain the utilisation rates of both private car and motorcycle parking spaces in the area to decide whether some should be reallocated for motorcycles.

A case of perfunctory decision



WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2006/1694

Water bills – (a) failing to issue water bills for two years; (b) delay in disconnecting water supply; and (c) failing to handle enquiries properly

High Water Charges

WSD demanded from the complainant payment for outstanding water charges of over $40,000 for the period October 2003 to November 2005. The complainant claimed that the flat in question had been mostly unoccupied during that period. He had also been there to check his mail once a month but never received any water bills.

Unsatisfactory Answers to Enquiries

2. He enquired with the WSD Customer Enquiry Centre but staff said that they were responsible for claiming outstanding charges only. He then lodged a written complaint with WSD. The Department replied that disconnection of water supply at the said premises had been attempted twice in 2004 and 2005 but both were unsuccessful. Dissatisfied with the Department's explanation, he lodged a complaint with this Office.

Computerised Billing System

3. According to its records, WSD had been sending water bills to the said premises since October 2003 when the complainant had stopped paying his bills. If a consumer failed to pay water charges, the Department's computerised billing system would

automatically initiate a series of actions on specified dates, such as levying a surcharge for outstanding payment, issuing Reminders and the Final Notice on Disconnection and arranging disconnection of water supply. The complainant's case had been handled in accordance with the established procedures.

Suspended Disconnection Action

4. Meanwhile, WSD was upgrading its computerised billing system in late 2004. At that time, it decided to withhold action on all disconnections relating to non-payment of bills. Such action was not resumed until October 2005.

Oversight by Staff

5. As regards its reply that staff had twice attempted disconnection but failed, WSD admitted that it was inaccurate due to the oversight of the subject officer. When he checked the computer system and found that disconnection had been arranged, he simply assumed that disconnection had actually been attempted but was unsuccessful, without finding out the real reason why water supply had not been disconnected. In fact, disconnection had been cancelled because of the upgrading of the computerised billing system.

Division of Responsibilities

6. As regards the complainant's allegation that WSD staff had failed to handle his enquiries properly, the officer concerned commented that as the incident had happened some time ago, she could no longer recall the details. However, she maintained that she had explained to the complainant the division of responsibilities amongst various sections in handling water charges and suggested that he lodge a written complaint. The Department was of the view that as the case involved the billing for water consumption for several years, it was impossible for the staff to provide a detailed reply on the spot. Nevertheless, she had rendered him appropriate explanation and assistance.

Our Observations and Comments

7. We found that the billing system had issued water bills and relevant notices according to specified time schedules.

8. The billing system had in fact arranged disconnection in December 2004 but it was cancelled due to the upgrading of the system. Otherwise, the water supply would have been disconnected in time and the complainant would be liable for only several hundred dollars of water charges.

9. WSD had twice withheld its disconnection action. This would increase the complainant's liability if he had nothing to do with the water consumption during the relevant period. The officer concerned had obviously failed to take note of this, resulting in providing wrong information to the complainant. It was indeed careless of the subject officer.

10. This Office suggested that if any drastic increases in water consumption is detected, the Department must take the initiative to investigate besides following the normal procedures so that the problem could be resolved promptly. On the other hand, if a consumer moved away from his residence, he should notify WSD quickly so that arrangement could be duly made to close his account.

11. As for the complainant's allegation that the staff had failed to handle his enquiries properly, since the complainant could not provide further particulars, this Office could not draw any conclusion in the absence of independence evidence.

A case of negligence and delay

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (“FEHD”)

Case No. OMB 2006/2895

Complaint handling – failing to relocate an animal carcass collection point, causing environmental nuisance for years

Complainant Not Consulted

The complainant claimed that FEHD had set up an animal carcass collection point in front of his residence five years ago without prior consultation. Worried about its impact on health, he complained to a District Environmental Hygiene Office of the Department. However, he found the staff there indolent and the problem persisted for years.

2. This Office suggested resolving the matter by mediation and both parties agreed.

Collection Point to be Relocated

3. At the mediation meeting, FEHD representatives explained the purpose and procedures for setting up the collection point. The complainant indicated that the collection point had caused him and his family much distress. FEHD staff undertook to relocate it. They also agreed to deploy more staff for patrol and clearance and to prosecute those who dump debris or animal carcasses there. The Department would also, in the interim, move the collection point further away from the complainant's residence and put up a net fence around it to prevent debris and construction waste from being dumped there. The complainant asked that FEHD inform him regularly of the progress of its relocation.

Agreement Reached

4. After a candid exchange of views, the two parties had a better mutual understanding. Agreement was reached on the implementation of improvement measures.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2006/3592

Sitting-out area – dog nuisance

The complainant alleged that some people had taken their dogs to a local sitting-out area at night to run around and play there, creating noise and hygiene nuisance. Although he had requested LCSD to display a "No dogs allowed" notice in the sitting-out area, the Department posted such notices only on the pillars of a pavilion. Considering these notices ineffective in drawing the attention of dog owners, he expressed his views to LCSD but received no reply.

2. As the case involved no grave maladministration, this Office suggested resolving the matter by mediation. Both parties agreed.

Agreement Reached

3. At the mediation meeting, LCSD representatives clarified their jurisdiction in this case and apologised for not replying promptly but explained that staff had intended to collect more information before replying. The Department had advised staff to reply quickly when processing complaints. The complainant was also informed that since receiving his complaint, a "No dogs allowed" notice had been displayed in the sitting-out area and night patrol enhanced.

4. After a candid exchange of views, the two parties reached an agreement. LCSD representatives undertook to advise dog owners to minimise their noise and undertook to display an extra "No dogs allowed" notice at the location suggested by the complainant. They would also request the Police to follow up the noise and hygiene nuisance created by dogs playing there. The complainant accepted the Department's explanation and arrangements.

Annex 16 Index of Cases Concluded by Full Investigation

(Cases with * have recommendation(s) in the investigation reports.)

Agriculture, Fisheries and Conservation Department

2006/1246	Failing to inform the complainant of the progress of a dog bite case in which his son was the victim	Partially substantiated*

Architectural Services Department

2006/0801	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Unsubstantiated

Buildings Department

2005/1403	Failing to handle properly three separate incidents of fallen scaffolding and trees happening almost simultaneously in Kowloon, which resulted in massive traffic congestion on three trunk roads	Partially substantiated*
2006/1534	Delay in handling a complaint regarding unauthorised building works	Substantiated*
2006/1632	Impropriety in handling a complaint on unauthorised building works and failing to respond to the complainant's enquiries	Substantiated*

Civil Engineering and Development Department

2006/1375	(a) Shirking responsibility in handling the complainant's request for construction of a public pier; and (b) Failure to respond promptly after receiving a referral	Unsubstantiated

Drainage Services Department

2006/0802	Lack of effective inter-department co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Unsubstantiated

Annex 16 Index of Cases Concluded by Full Investigation

Environmental Protection Department

2005/1334	Ineffective enforcement action against the operation of an unlicensed barbecue restaurant	Unsubstantiated*
2006/0803	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Unsubstantiated

Fire Services Department

2005/3571	Impropriety in handling a complaint about non-installation of automatic sprinkler system in a warehouse	Unsubstantiated

Food and Environmental Hygiene Department

2005/0235	Ineffective enforcement action against the operation of an unlicensed barbecue restaurant	Unsubstantiated*
2006/0091	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Substantiated*

Government Secretariat - Education and Manpower Bureau

2005/4125	Failing to properly handle a complaint about wilful decision by a subsidised school in changing its school uniform supplier	Unsubstantiated*

Government Secretariat - Environment, Transport and Works Bureau

2005/1401	Failing to handle properly three separate incidents of fallen scaffolding and trees happening almost simultaneously in Kowloon, which resulted in massive traffic congestion on three trunk roads	Partially substantiated

Government Secretariat - Housing, Planning and Lands Bureau

2005/2190 2005/2213	Mishandling two applications for short-term use of Government land	Substantiated*

Annex 16 Index of Cases Concluded by Full Investigation

Highways Department

2005/1404	Failing to handle properly three separate incidents of fallen scaffolding and trees happening almost simultaneously in Kowloon, which resulted in massive traffic congestion on three trunk roads	Unsubstantiated
2006/0935	Failing to verify the ownership of a site, resulting in village lighting works being carried out on private land	Substantiated*

Home Affairs Department

2006/0804	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Unsubstantiated
2006/0934	Wrongly attributing part of a site to Government land and failing to pursue properly a complaint on the issue	Partially substantiated

Hong Kong Housing Authority

2006/0594 2006/0596 2006/0598 2006/0600 2006/0602	Failing to monitor the main contractor of the Authority's three construction projects	Unsubstantiated

Hospital Authority

2006/0445	Unreasonably requiring the complainant to attend a hearing test despite previous confirmation of his deafness by a doctor in respect of his application for Disability Allowance	Unsubstantiated*

Housing Department

2005/1967	Ineffective enforcement action taken against the operation of an unlicensed barbecue restaurant	Partially substantiated
2005/3572	Impropriety in handling a complaint about unauthorised change of land use and failing to take enforcement action	Partially substantiated

2005/3789	Delay in recovering a public housing unit and effecting transfer of tenancy to the complainant, who had custody of her child after divorce	Substantiated*
2006/0151	Failing to take into consideration the complainant's absence from Hong Kong for intake formalities when cancelling his application for public rental housing	Unsubstantiated
2006/0593 2006/0595 2006/0597 2660/0599 2006/0601	(a) Failing to monitor the main contractor of three construction projects of the Hong Kong Housing Authority; and (b) Failing to keep its promise to effect disbursement of wages in arrears to employees of the sub-contractors of the above-mentioned main contractor	Unsubstantiated
2006/2916	Failing to assist divorced tenants in solving their housing problems	Unsubstantiated*
2006/3277	Impropriety in handling backflow of sewage in the complainant's unit and failure to take follow-up action after the incident	Unsubstantiated*

Immigration Department

2005/2727	(a) Rejecting the complainant's request to claim his lost identity card and asking him to apply and pay for a replacement; and (b) Poor staff attitude	Substantiated other than alleged
2006/1870	Poor General Enquiry Hotline service	Unsubstantiated*
2006/2381	Failing to respond to the complainant's email enquiry	Substantiated*
2006/2655	Poor telephone enquiry service at a branch office	Unsubstantiated
2006/2983	Poor telephone enquiry service at a branch office and unsatisfactory hotline and internet appointment service for identity cards	Unsubstantiated
2006/3034	Poor telephone enquiry service at its travel documents issuing office	Unsubstantiated

2006/3194	Poor Enquiry Hotline service at its Foreign Domestic Helpers Section	Partially substantiated*
2006/3205	Poor telephone enquiry service at a marriage registry	Partially substantiated*
2006/4076	Poor telephone enquiry service at two branch offices	Unsubstantiated

Information Services Department

2006/2382	Failing to respond to the complainant's email enquiry	Substantiated*

Labour Department

2006/1807	Impropriety in handling the complainant's compensation case.	Substantiated*

Lands Department

2005/1966	Ineffective enforcement action against the operation of an unlicensed barbecue restaurant	Unsubstantiated*
2005/3240(A)	Failing to consult owners of an estate before approving the change of use of a shop in the shopping centre	Partially substantiated*
2005/3573	Impropriety in handling a complaint about unauthorised change of land use and unauthorised structures, and failing to take enforcement action	Partially substantiated*
2006/0090	(a) Failing to curb illegal earth filling; (b) Failing to cope with the consequential drainage and illegal parking problem; and (c) Not keeping the complainant informed of developments	Partially substantiated*
2006/0805	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Partially substantiated*
2006/0936	Issuing an excavation permit without checking whether the road works involved private land	Unsubstantiated*

2006/1210	Failing to follow up an application for a short-term tenancy and a complaint about slope safety and unauthorised building works	Partially substantiated*

Leisure and Cultural Services Department

2005/2545	Failing to resolve the problem of some people using a roller skating rink for other sports activities	Substantiated*
2005/3809	Inadequate measures to protect personal belongings deposited in lockers in a public swimming pool	Substantiated*
2006/0806	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Unsubstantiated

Marine Department

2006/2741	Failing to stop a metal trading company from dropping scraps into the sea during transit, and to take action to remove the scraps accumulated on the seabed	Unsubstantiated

Post Office

2006/0549	Failing to reply to the complainant's request for a certified non-delivery record of a registered mail	Substantiated*

Social Welfare Department

2005/3658	Failure to properly monitor the performance of a non-governmental welfare organisation	Unsubstantiated*
2006/0446	Wrongly referring the complainant to a general clinic for assessment of deafness in respect of his application for Disability Allowance	Substantiated*
2006/3334	Impropriety in handling the complainant's allegation that her ex-husband had sent indecent email messages to her daughter and failure to stop him from continuing to visit her children	Unsubstantiated

Annex 16 Index of Cases Concluded by Full Investigation

Transport Department

2005/1402	Failing to handle properly three separate incidents of fallen scaffolding and trees happening almost simultaneously in Kowloon, which resulted in massive traffic congestion on three trunk roads	Partially substantiated*
2006/0866	(a) Shirking responsibility in handling the complainant's request for construction of a public pier (b) Lack of response to the complainant's request and failure to monitor the progress after referring the case to other departments; and (c) Disclosing the complainant's request to a third party	Partially substantiated*
2006/2910	Inadequate control over illegal passenger transport activities of light goods vehicles	Unsubstantiated*
2006/3756	Inadequate control over illegal passenger transport activities of light goods vehicles	Unsubstantiated
2006/3811	Failure to eliminate noise nuisance problem at a bus terminus	Unsubstantiated

Vocational Training Council

2005/3975	Impropriety in conducting a tender exercise	Substantiated*

Water Supplies Department

2005/1357	Delay in handling applications for new water supply	Partially substantiated
2006/0807	Lack of effective inter-departmental co-ordination and communication, thereby causing delay in approving an application for the provision of a dog latrine in the vicinity of a private housing development	Unsubstantiated

HOME AFFAIRS DEPARTMENT ("HAD"), LANDS DEPARTMENT ("Lands D") and HIGHWAYS DEPARTMENT ("Hy D")

Case No. OMB 2006/0934-0936

HAD – land status information and complaint handling – wrongly attributing part of a site to Government land and failing to pursue properly a complaint on the issue – partially substantiated

Lands D – excavation permit – issuing an excavation permit without checking whether the road works involved private land – unsubstantiated

Hy D – village lighting works – failing to verify the ownership of a site, resulting in village lighting works being carried out on private land – substantiated

Land Status Dispute

Owner of a village site, the complainant claimed that some years ago the enclosing wall on the site had been set back three feet by the former owner to enable Government to build an access road for the villagers. However, allegedly, during a field survey for relocating a village light, a staff member of the local District Office ("DO") under HAD stated that the area outside the wall was Government land.

2. The complainant then complained repeatedly to DO, which wrote back to clarify that the staff member was referring to another piece of land and that any queries on the boundary of the complainant's site could be directed to the local District Lands Office ("DLO") under Lands D.

3. In view of the complainant's continued dissatisfaction, DO checked past records and advised him that the entire road was on Government land.

DO's Delay

4. Although DO responded to all the complainant's queries, it had taken more than four months to check the records and to reply substantively. This was an unreasonably long time. The complaint against HAD was, therefore, partially substantiated.

5. HAD and DO have instructed the staff concerned to handle such matters more expeditiously in future.

Lands D's Non-involvement

6. Lands D had, in fact, never received any application for excavation permit for the relocation of the village light. It was, therefore, not involved. The complaint against Lands D was thus unsubstantiated.

Hy D's Negligence

7. After Hy D had decided on the new location of the village light, its contractor proposed to run the cable from another village light underground through unleased Government land. With delegated authority from Lands D, Hy D exempted the contractor from applying for an excavation permit. However, Hy D staff did not check the land status and part of the cable was in fact laid outside the enclosing wall but within the complainant's site.

8. On receipt of his complaint, Hy D apologised in writing. The complainant did not insist on removal of the cable as the works would benefit villagers.

9. As the incident had been caused by staff negligence, the complaint against Hy D was substantiated.

10. The Department has reminded staff to adhere to its "Village Lighting Procedures" and written to alert contractors to land status in villages.

Conclusion and Recommendation

11. Overall, The Ombudsman considered this case partially substantiated.

12. DLO still could not clarify with him the boundary of his lot. As the reinstatement of the cable trench has been put on hold pending DLO's confirmation of the complainant's site boundary, this Office urged Lands D and Hy D to follow up the issue actively with the complainant.

A case of delay and negligence

HOSPITAL AUTHORITY ("HA") AND SOCIAL WELFARE DEPARTMENT ("SWD")

Case Nos. OMB 2006/0445-0446

HA – disability allowance – (a) unreasonably requiring an applicant to attend a hearing test despite a doctor's confirmation of his deafness earlier –unsubstantiated

SWD – same – (b) wrongly referring the applicant to a general clinic for assessment of deafness – substantiated

The Complaint

The complainant's father, an applicant to SWD for disability allowance ("DA") on grounds of deafness, was referred to an HA general clinic for assessment. A doctor certified his deafness and recommended DA for six months.

2. Before expiry of the grant period, the complainant requested renewal of the applicant's DA. SWD again referred the applicant for assessment at the general clinic. This time, another doctor did not conduct an assessment but referred him to an HA specialist clinic instead. There, the applicant was told to attend a hearing test more than 16 months after the expiry of the grant period.

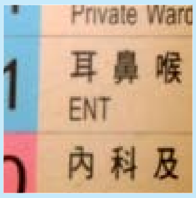
3. The complainant criticised SWD and HA for their lack of coordination over the applicant's renewal of DA.

Assessment Procedures

4. To be eligible for DA, an applicant must be certified to be in a disabling physical or mental condition, or profoundly deaf. According to SWD's Manual of Procedures, an applicant claiming to be profoundly deaf but not having had a hearing test will be referred to an Ear, Nose and Throat ("ENT") doctor of HA for assessment and certification.

SWD's Explanation

5. When the applicant first applied for DA at a Social Security Field Unit, there was no record that he had had treatment at any specialist clinic or that he was applying for DA on grounds of deafness. Hence, the staff member referred him to a general clinic for a general assessment. The doctor at the general clinic then recommended granting DA to the applicant for six months on grounds of deafness. The Field Unit made the grant accordingly.



6. SWD pointed out that DA cases were normally brought up for review 40 days before the expiry of the grant period. However, in this case, the complainant had asked for an earlier assessment. In view of his age (84) and the lack of any medical follow-up at the time, SWD made a special arrangement for him to visit the general clinic again.

HA's Explanation

7. In line with SWD procedures, applicants for DA on grounds of profound deafness should be assessed by an ENT doctor at an HA specialist clinic by way of a hearing test.

8. When the applicant visited the general clinic for the first time, the doctor was not aware of such requirement and, therefore, assessed and certified him as deaf.

9. During the applicant's second visit to the general clinic, another doctor, aware of the requirement, referred him to a specialist ENT clinic for assessment. Due to the huge public demand and the relatively low priority of the applicant's case, a hearing test was scheduled more than a year later.

Our Comments

10. It was reasonable for HA to require all applicants for DA for profound deafness to have a proper hearing test. Consequently, the assessment of the doctor at the general clinic without such a test could not be taken as confirmation that the applicant was suffering from profound deafness.

11. In this light, we considered complaint point (a) in itself unsubstantiated. However, the certification of deafness and recommendation for DA by the first doctor at the general clinic without regard to proper procedures constituted an act of maladministration.

12. As regards complaint point (b), the staff member might be excused for the first referral to a general clinic, as he might be uncertain about the applicant's ailment. However, it was clearly not in keeping with the SWD Manual for the Field Unit to accept the assessment of deafness by the general clinic doctor, instead of an ENT doctor, and to grant DA to the applicant based solely on such assessment.

13. With the second referral, the staff member should have been quite clear that the applicant was seeking renewal of his DA on grounds of deafness and referred him direct to the specialist clinic for assessment, not to the general clinic again. There could be no excuse for this error. Complaint point (b) was, therefore, substantiated.

14. Overall, this complaint was partially substantiated.

Recommendation

15. The Ombudsman recommended that HA and SWD remind staff of the established procedures to avoid recurrence of similar incidents.

A case of failure to follow procedures

HOUSING DEPARTMENT ("HD")

Case No. OMB 2005/3789

Public housing - delay in recovering a unit and effecting transfer of tenancy to the complainant, who had custody of her son after divorce - substantiated

The Complaint

The complainant used to live in a public housing unit with her husband and son. After divorce, she was granted custody of her son and tenancy of the unit. Nevertheless, her ex-husband refused to move out. She complained that HD had delayed recovering the unit for her.

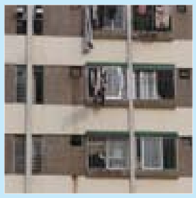
Housing Policy

2. According to housing policy, divorced tenants will not be offered an extra housing unit. If they cannot reach agreement, the Department will normally grant the tenancy to the party having custody of their children.

HD's Prolonged Handling

3. In this case, HD had written and telephoned the ex-husband many times to arrange an interview but in vain. He only stated that he could not reapply for public housing because his income exceeded the limit. At the same time, he was unwilling to move out because of his alleged financial difficulty. At his request, HD referred his case to a social welfare organisation. After assessment, the organisation considered compassionate rehousing not justified.

4. HD notified him of the result and tried to make another appointment for interview. Again, he did not respond. The Department eventually issued him a Notice of Termination of Tenancy and a Notice to Quit. He then lodged an appeal. As the hearing would take some time, HD allotted another unit to the complainant.



5. The process took over four months.

Our Comments

6. This Office considered that HD, having granted the tenancy of the unit to the complainant according to its policy, should have recovered the unit promptly from the ex-husband so that the complainant and her son would not be left homeless. If the ex-husband was in difficulty, HD could help him by offering interim housing for one year. Referral of his case to a social welfare organisation had served no purpose.

7. HD's procrastination by repeatedly arranging interviews with the ex-husband had caused considerable unfairness and hardship to the complainant.

Conclusion and Recommendations

8. The complaint was, therefore, substantiated.

9. HD agreed to The Ombudsman's recommendations to:

(a) apologise to the complainant; and

(b) formulate specific guidelines to set a time limit for frontline staff for arranging interviews with and issuing Notices to Quit to out-going tenants.

A case of delay and unfairness

HOUSING, PLANNING AND LANDS BUREAU ("HPLB")

Case Nos. OMB 2005/2190; OMB 2005/2213

Short-term tenancy – mishandling applications for short-term use of a Government site – substantiated

The Complaints

In September 2004, the complainants (two event organisers) separately applied for short-term use of a Government site in April and October 2005. HPLB replied in October 2004 that short-term use of the site was being considered and that the Lands Department ("Lands D") would invite tenders by the end of 2004 or early 2005. The event organisers could then submit their bids.

2. Since then, they had not seen any invitation for tenders, but another event organiser ("Company A") was found to advertise in April 2005 a function to be held at that very site in October 2005. The complainants raised the issue with HPLB in April and May 2005 for clarification of the tender procedures. HPLB vaguely replied to one of them that some time slots in the latter half of 2005 were still available and advised the complainant to contact Lands D direct. The Bureau did not respond to further enquiries from the two complainants.

3. Against this background, the complainants complained to this Office against HPLB for mishandling their applications.

Use of the Site

4. The site had been managed by Lands D since March 2003. In November 2003, HPLB was tasked to identify suitable short-term uses for the site in consultation with the Commerce, Industry and Technology Bureau ("CITB") and another bureau.

5. In September 2004, with policy support from CITB, Lands D decided to grant the site to a certain statutory body on a short-term tenancy ("STT") for April and October for three years from 2005 to 2007. Separately, Lands D would consider tendering for a principal tenant to use the site on STT outside of those two slots for three years.

6. On 11 October 2004, CITB confirmed in writing to Lands D with copy to HPLB the exact dates when the statutory body would use the site in April and October in each of the three years 2005 to 2007. In this connection, CITB made a media announcement on the following day.

HPLB's Replies to Complainants

7. Despite having received CITB's information, HPLB replied to one of the complainants on 12 October 2004 that Lands D would invite tenders later. Moreover, it did not mention that the April and October slots had already been taken.

8. HPLB explained to this Office that its reply to the complainants had been issued before CITB's media announcement that same day. With hindsight, the Bureau agreed that it should have mentioned Lands D's prior allocation of the two time slots.

9. As regards Company A's use of the site (paragraph 2), HPLB stated that the company's application had preceded those of the two complainants. As it would be improper to disclose information of one applicant to another, the Bureau did not mention this prior application to the complainants.

Subletting Arrangements

10. The STT allowed the statutory body to sublet to a specified company, *viz*. "Company A", for a certain purpose during some specified periods and this company was permitted to further sublet to others. In this context, HPLB argued that the shared use of the site by the statutory body and Company A was legitimate.

Our Observations and Comments

11. This Office considered that HPLB had ample opportunities to inform the complainants of the results of their applications and the real situation. This was a straightforward matter of facts. There was no excuse for HPLB not to be open and simply advise the complainants that the slots requested were not available.

12. Furthermore, even though CITB had made a media announcement, it was no excuse for HPLB not to answer the complainants' queries with the full facts. The Administration has been promoting transparency and openness with the public by giving clear, full and factual answers to enquiries. HPLB should have replied to the complainants earlier and more clearly. There was no excuse for delay or incomplete information in reply.

13. We accepted HPLB not disclosing specific information about another applicant. However, it should have been possible, without any mention of Company A, to advise the complainants from the outset that the slots sought were not available and that the site was subject to subletting.

Conclusion

14. HPLB's handling of the matter had fallen short of reasonable public expectations of an open, transparent and responsible government. Against this background, The Ombudsman considered the complaints substantiated.

Recommendations

15. The Ombudsman recommended that the Secretary for Housing, Planning and Lands:

(a) apologise in writing to the complainants for the delay in reply and the inconvenience caused; and

(b) remind staff of the need to give timely replies with accurate and adequate information to public enquiries and applications.

Response from HPLB

16. HPLB appreciated our findings and has implemented our recommendations.

17. On the issue of subletting, HPLB has further explained that subletting to Company A had been specified in the STT because the company had applied to Government to use the site for a major exhibition beneficial to the trade and the exhibition industry. For this reason, it had gained CITB's policy support.

Our Final Remarks

18. We consider it reasonable for a statutory body promoting Hong Kong's economic development to be granted an STT without recourse to tender. We could also understand the need for subletting for an exhibition on a mega scale.

19. However, we do not accept HPLB's explanation for stipulating in the STT an arrangement of subletting to a **single specified company**. This unusual arrangement was tantamount to the award of an STT to a commercial company, bypassing the normal tendering requirements. There must be many other companies also capable of organising such exhibitions and they should have been given an equal opportunity to bid. HPLB's decision was, therefore, grossly unfair.

A case of disparity of treatment and lack of transparency

IMMIGRATION DEPARTMENT ("Imm D")

Case No. OMB 2005/2727

Identity cards – (a) rejecting the complainant's request to claim his lost identity card and asking him to apply and pay for a replacement; and (b) poor staff attitude – substantiated other than alleged

The Complaint

The complainant lost his identity card ("ID card") in a shop and later learned that the shopkeeper had mailed it to Imm D. He telephoned the Department to claim his card. However, an officer replied that the law requires ID cards returned to be destroyed and holders to apply for a replacement at a fee of $395. Allegedly, another officer also refused to consider his student status and financial difficulty.

2. The complainant considered the refusal unreasonable and the officer's attitude poor.

How Imm D Handled the Case

3. The latter officer had in fact telephoned the complainant to elaborate on the requirements in relation to the loss of ID cards, indicating that holders were required to report such loss to a registration officer within 14 days and apply for a replacement. The statutory fee for replacement was $395 and the Department had no authority for waiver. As the complainant was a student and could not afford the fee, the officer advised him to raise the matter with his parents. However, he did not accept the explanation or suggestion. Subsequently, the Department wrote back to the complainant to explain the law, informing him that it had not received his lost ID card and that he should apply for a replacement as soon as possible.

4. Later, Imm D received a batch of ID cards returned through the Post Office, including the complainant's. In view of his persistence, the Department returned the card to him.

Our Observations and Comments

5. On complaint (a), this Office considered it proper for the Imm D staff to inform the complainant of the relevant requirements on learning that he had lost his ID card. Although the complainant was a student and expressed difficulty in paying the fee, the Department was not authorised to waive it. It was, therefore, reasonable and appropriate for the officer concerned to advise him to discuss the matter with his parents.

6. As regards complaint (b), the officer denied having been impolite but indicated that the complainant had in fact reproached her vehemently. In view of their different accounts of the incident, we were unable to make a conclusive judgement without independent evidence. However, we believe that public officers should always serve members of the public with courtesy and that clients should also mind their manners when served.

Conclusion

7. Both complaint points were, therefore, unsubstantiated.

8. However, we found the requirements stated in paragraph 3 above to be at variance with Imm D's eventual return of the complainant's ID card. This was tantamount to waiver of the requirements.

9. We pointed this out and Imm D admitted that such arrangement was improper. It would stop such practice immediately.

10. In this light, The Ombudsman considered the case substantiated other than alleged.

A case of wrong decision

Annex 17 Summaries of Selected Cases Concluded by Full Investigation

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2006/0090

Land administration – (a) failing to curb illegal earth filling; (b) failing to cope with the consequential drainage and illegal parking problems; and (c) not keeping the complainant informed of developments - partially substantiated

The Complaint

The complainant alleged that a District Lands Office ("DLO") under Lands D had been lax in enforcement action and failed to curb illegal earth filling at a Government site and the ensuing problems.

Illegal Earth Filling Not Curbed

2. According to the records, when DLO detected the illegal earth filling, it was near completion. Reinstatement then was not feasible as it would affect the stability of the adjacent land and village houses. However, DLO took steps to prevent deterioration.



3. The private land adjacent to the subject site was leased for village house purposes and DLO had to conduct regular inspections. As the filling had been substantial and could not have been completed within a short time, DLO could have detected and curbed it. Complaint (a), therefore, was partially substantiated.

Drainage Problems Tackled

4. The filling covered the drainage channels on a nearby slope managed by the Highways Department ("Hy D"). DLO had notified Hy D to handle the drainage problems. It had also conducted several site visits and liaised with relevant departments on those problems. They had jointly explored various improvement measures and eventually requested owners of the adjacent private land to submit a site formation and drainage plan to solve the problems completely. This part of complaint (b) was, therefore, unsubstantiated.

Illegal Parking Not Stopped

5. After discussion with the complainant, DLO had thrice installed bollards to prevent vehicles from entering or parking at the filled area. However, facing strong protest from the village representative, DLO allowed the contractor to remove some of the bollards.

6. The Geotechnical Engineering Office pointed out that for soil stability and pedestrian safety, no parking should be allowed there. Accordingly, this Office considered that DLO should promptly erect additional bollards to stop vehicular ingress, instead of continuing to succumb to unreasonable protest. This part of complaint (b) was, therefore, substantiated.

Complainant Kept Informed

7. After a site visit with the complainant, DLO had informed him in writing of the situation and also kept in touch with him by telephone. Subsequently, DLO visited the site again with him. The complainant had also been invited to attend an inter-departmental meeting on possible solutions to the problems. As DLO had indeed kept the complainant well posted, complaint (c) was unsubstantiated.

Conclusion and Recommendations

8. Overall, this complaint was partially substantiated.

9. This Office recommended that:

(a) Lands D review DLO's scheduling of site inspections to ensure early detection of irregularities;

(b) DLO promptly erect additional bollards to stop vehicular ingress into the site; and

(c) DLO continue to liaise with departments concerned in monitoring the site formation and drainage works there.

A case of delay and ineffective control

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB 2005/2545

Leisure venues – failing to prevent people from playing unicycle hockey in a roller skating rink without permission – substantiated

The complainant found some people often playing unicycle hockey in a LCSD roller skating rink. She had been to the rink thrice within eight days and found unicycle hockey playing each time. Although she had complained to LCSD each time, the problem persisted.

Prosecution Unnecessary

2. Upon receipt of the complaint, the Government Integrated Call Centre ("ICC") referred it to LCSD the next day. LCSD staff went to the rink several times to stop the unicycle hockey players. However, the Department considered prosecution not necessary because the players used the rink when there was no priority user and they stopped their activity upon advice. In brief, they had not obstructed or disturbed other users.

LCSD's Action

3. LCSD advised these unicycle hockey players to apply for non-designated use of the rink. Since the utilisation rate of the rink was low, the Department approved their application and permitted them to play in the rink at specified time slots.

4. In this connection, LCSD inspected the rink more frequently. The booking charts of the rink for the current three months were posted prominently on a notice board nearby for public information.

5. The Department considered the staff involved to have taken into account the needs of different users and followed up the complaint promptly. It also considered the existing mechanism and arrangements adequate to deal with similar incidents.

LCSD Action Inadequate

6. This Office considered that LCSD should review both the mechanism for managing leisure venues and the practice of classifying such complaints as non-urgent cases. If people played unicycle hockey in a rink without permission and obstructed roller skaters, LCSD staff should act immediately and ask them to leave the rink. If they refused to cooperate or ignored repeated advice, the Department should consider prosecution for deterrent.

7. LCSD had obviously failed to solve the problem. The complainant had to complain repeatedly and eventually went to another rink for roller skating. The Ombudsman, therefore, considered this complaint substantiated.

Our Recommendations

8. The Ombudsman recommended LCSD to:

(a) continue to inspect the rink more frequently;

(b) prosecute repeat offenders;

(c) apart from posting the booking charts of the rink for the current three months prominently, provide contact, for day and night, with LCSD's local district office;

(d) inform ICC to classify such complaints as urgent cases and refer them to LCSD immediately for action; and

(e) liaise with the complainant to see if she would like to use the rink again, and offer her assistance if necessary.

Final Remarks

9. LCSD has implemented recommendations (a) to (c) and (e). On recommendation (d), LCSD has explained that if a case posed imminent danger or involved loss of property and lives, ICC would treat it as urgent and inform the Department immediately to follow up; otherwise, ICC would determine its own priority in handling cases.

10. The Ombudsman, nevertheless, maintained that LCSD should review the operational arrangements with ICC on referral of complaints.

A case of ineffective control

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2005/3658

Social services – failing to ensure due care by a subvented social welfare organisation to the needy – unsubstantiated

The Complaint

On 2 October 2005, the complainant called SWD and requested its staff to visit and assist a frail and elderly neighbour Mr A, who lived alone. On the same day, SWD referred the case to a subvented social welfare organisation ("Organisation B") for follow-up.

2. On 17 October, Organisation B called the complainant. Although the complainant pointed out that Mr A might be illiterate, the case worker insisted on writing to seek Mr A's consent before visiting him.

3. To his dismay, the complainant learned on 25 October that Mr A had died a few days ago. He then informed Organisation B.

4. The complainant complained to this Office that SWD had failed to ensure the provision of due care by Organisation B to the needy.

What Should be Done

5. According to the procedures then, upon receiving a call for assistance, SWD would refer the case to a social welfare organisation within 24 hours. If there was no response within five working days, the Department would fax the referral form again and follow up by telephone. For cases requiring immediate outreach service, SWD would mark "urgent" on the referral form to remind the organisation to take action as soon as possible.

6. To ensure quality service by subvented organisations, SWD monitored their overall performance and asked for periodical service statistics and self-assessment reports. If an organisation failed to improve its service, the Department might consider suspending or terminating the subvention.

What Went Wrong

7. Based on the complainant's description of Mr A's condition on 2 October, SWD staff did not consider immediate outreach service necessary. However, the case was detailed in a referral form and faxed to Organisation B at once. SWD staff then followed up by telephone to ascertain that the form had been received.

8. As SWD had not classified the case as "urgent", staff of Organisation B put the form aside. The case worker did not contact the complainant within five working days according to the organisation's procedures.

9. Organisation B's "Procedures for Handling Case Referrals" did not remind staff to be particularly alert to cases of frail and elderly clients living alone. The case worker had not assessed the need for immediate service to Mr A. He handled the case inflexibly by insisting on obtaining his consent before visiting him.

10. Subsequently, SWD advised Organisation B to review and improve its guidelines. The organisation accepted the advice and also issued a warning to the case worker.



Our Comments

11. This Office noted that SWD had referred the case promptly to Organisation B and its procedures and measures were reasonable. It was basically Organisation B which had mishandled the case and was deficient in its procedures.

Conclusion and Recommendations

12. In this light, The Ombudsman considered the complaint against SWD unsubstantiated.

13. Nevertheless, The Ombudsman recommended that SWD:

(a) in line with Organisation B's revised "Procedures for Handling Case Referrals", classify priority cases according to their nature and, during referral, remind the organisation concerned of the urgency of individual cases; and

(b) advise all other subvented organisations to formulate similar procedures for handling case referrals.

14. SWD has implemented these recommendations.

TRANSPORT DEPARTMENT (“TD”) AND CIVIL ENGINEERING AND DEVELOPMENT DEPARTMENT (“CEDD”)

Case Nos. OMB 2006/0866; OMB 2006/1375

TD and CEDD – provision of public pier – shirking responsibility in handling a request for construction of a public pier – partially substantiated

TD – privacy protection – disclosing the request to a third party – unsubstantiated

The Complaint

The complainant operated a *kaito* (local) ferry service between two outlying islands. He wrote to TD in May 2005 and March 2006 requesting construction of a public pier to ensure passenger safety and to save his expenses on renting a private pier. He was informed that CEDD was following up. However, he did not receive any response except a simple interim reply from TD at the end of March 2006. He alleged that TD and CEDD had shirked their responsibilities and delayed responding to his request. Moreover, TD had disclosed his request to the owner of the private pier without his consent.

Division of Responsibilities

2. Before 2006, TD’s and CEDD’s responsibilities in these matters were unclear. TD was mainly responsible for regulating *kaito* services and CEDD for constructing public marine facilities.

3. In January 2006, the departments concerned established new guidelines, under which TD would coordinate response to complaints involving more than one department and assess the need for construction of or improvement to public piers while CEDD would remain as the works agent for constructing and maintaining such piers.

TD Shirked Responsibility

4. The complainant made his request first to TD. While the division of departmental responsibilities was then unclear, it would be reasonable to expect TD to have acted as a coordinator, examined this issue with other relevant departments and consolidated a reply to the complainant. It is improper of TD just to ask CEDD repeatedly to reply to the complainant, thereby confusing him with incomplete replies.

5. It was only after February 2006 when the new guidelines had been promulgated that TD actively liaised with other relevant departments, the owner of the private pier and the complainant to seek a solution to his problems.

6. This complaint point against TD was, therefore, substantiated.

CEDD Acted Appropriately

7. TD's first referral in May 2005 did not reach CEDD because of wrong fax number. Upon receipt of TD's second referral in July, CEDD promptly replied that it had no plan to construct a new pier as the private pier was in service. Its position was clear. CEDD had, therefore, fulfilled its duty.

8. The complaint against CEDD was unsubstantiated.

TD Denied Disclosure

9. TD denied having disclosed the complainant's request to the owner of the private pier. It explained that it had merely enquired of the latter about the condition of the pier. In the absence of independent evidence, we could not make a judgement on the complainant's allegation.

Conclusion

10. Overall, The Ombudsman considered the complaint partially substantiated.

Recommendations

11. The Ombudsman recommended that TD:

(a) instruct staff to liaise closely with relevant departments on inter-departmental issues for consolidated replies to the public; and

(b) review its procedures to prevent similar misdelivery of documents.

A case of shirking of responsibility

VOCATIONAL TRAINING COUNCIL ("VTC")

Case No. OMB 2005/3975

Tender procedures – impropriety in conducting a tender exercise – substantiated

The complainant, an engineering company, was aggrieved over the short time allowed for:

(a) responding to VTC's invitation to tender for one lot (four items) of bakery workshop equipment; and

(b) delivering the equipment.

It was alleged that VTC might have had some understanding with a specific supplier ("Company K") prior to the tender exercise.

Stringent Timing

2. The equipment was urgently required for the Open Day and anniversary celebrations of a VTC Institute of Vocational Education. VTC invited 11 suppliers to tender, with the tender period cut under proper authority from five to three working days due to urgency. However, the tight timetable for tender closing and equipment delivery resulted in most bidders being unable to bid. This created a favourable environment for one single supplier, Company K, known to have the stock during a visit by campus staff earlier.

Two Bids by Company K

3. In the event, Company K made two bids:

(a) the first, submitted **before** tender closing, did not include quotation for one item (a spiral mixer) and offered delivery of another item ("item X") after the timeline specified by VTC; and

(b) the second (i.e. supplementary quotation), submitted **after** tender closing, covered all items with delivery of item X amended and the spiral mixer expected "approximately six to eight weeks".

Non-conforming Offers

4. We noticed that Company K's initial offer had failed to conform to the tender specifications on the delivery of item X and had not covered the spiral mixer. Moreover, Company K was allowed to submit a supplementary quotation even after tender closing.

5. However, Company K's second bid still failed to comply fully with the specified delivery date for the spiral mixer. Although VTC maintained that there had been a supplementary verbal agreement with Company K over the timely delivery of the mixer, this was not borne out by any records. On the contrary, VTC's purchase order enclosing Company K's second bid and order confirmation consistently referred to the deferred delivery of the spiral mixer.

6. Eventually, Company K did not deliver the spiral mixer on time. Instead, it lent a different model of the item to the campus until the specified mixer was available.

7. Thus, the situation lent credence to the complainant's suspicion that there had been some prior arrangements between VTC and Company K.

Our Conclusion

8. We could not accept the tender exercise as having been conducted fairly. Company K had indeed been given an unfair edge over other bidders with its supplementary quotation and non-conforming offer of the spiral mixer on loan.

9. VTC's tendering system had been compromised. Its professed urgency could have been avoided by better planning for the events (especially for the anniversary). Alternatively, it could have resorted to the Council's provision of "direct purchase authority", for waiving competitive tendering at times of urgency.

10. The complaint against VTC was, therefore, substantiated.

Our Recommendations

11. The Ombudsman made the following recommendations to VTC:

(a) to remind staff not to breach procurement rules for expediency, or they might face disciplinary actions; and

(b) to establish an internal audit system for random checks on tendering and purchases to ensure proper and adequate documentation.

Response from VTC

12. VTC maintained that the tender exercise had been conducted fairly in accordance with its procurement rules. It challenged our conclusion, stating that it should be based on proof beyond doubt and not speculation. It argued that the short tender closing and delivery timelines had been set to meet VTC's requirement to purchase from local available stock, which the complainant did not hold. There was no change of substance in Company K's second bid after tender opening and the supplementary quotation in line with VTC's established practice of "negotiation" with bidders. Furthermore, a verbal agreement was a valid contract: so Company K's bid in respect of the delivery of the spiral mixer was also conforming.

13. While admitting clerical errors and inadequate documentation at some stages of the process, VTC considered them irrelevant to the fairness of the tender exercise.

14. Nonetheless, VTC acknowledged the need to establish clear guidelines on supplementary quotation and direct purchase authority, and to implement our recommendations.

Expert Advice

15. We consulted the Government Logistics Department ("GLD"), Government's adviser on tendering procedures. GLD considered VTC's exercise to have been fundamentally flawed.

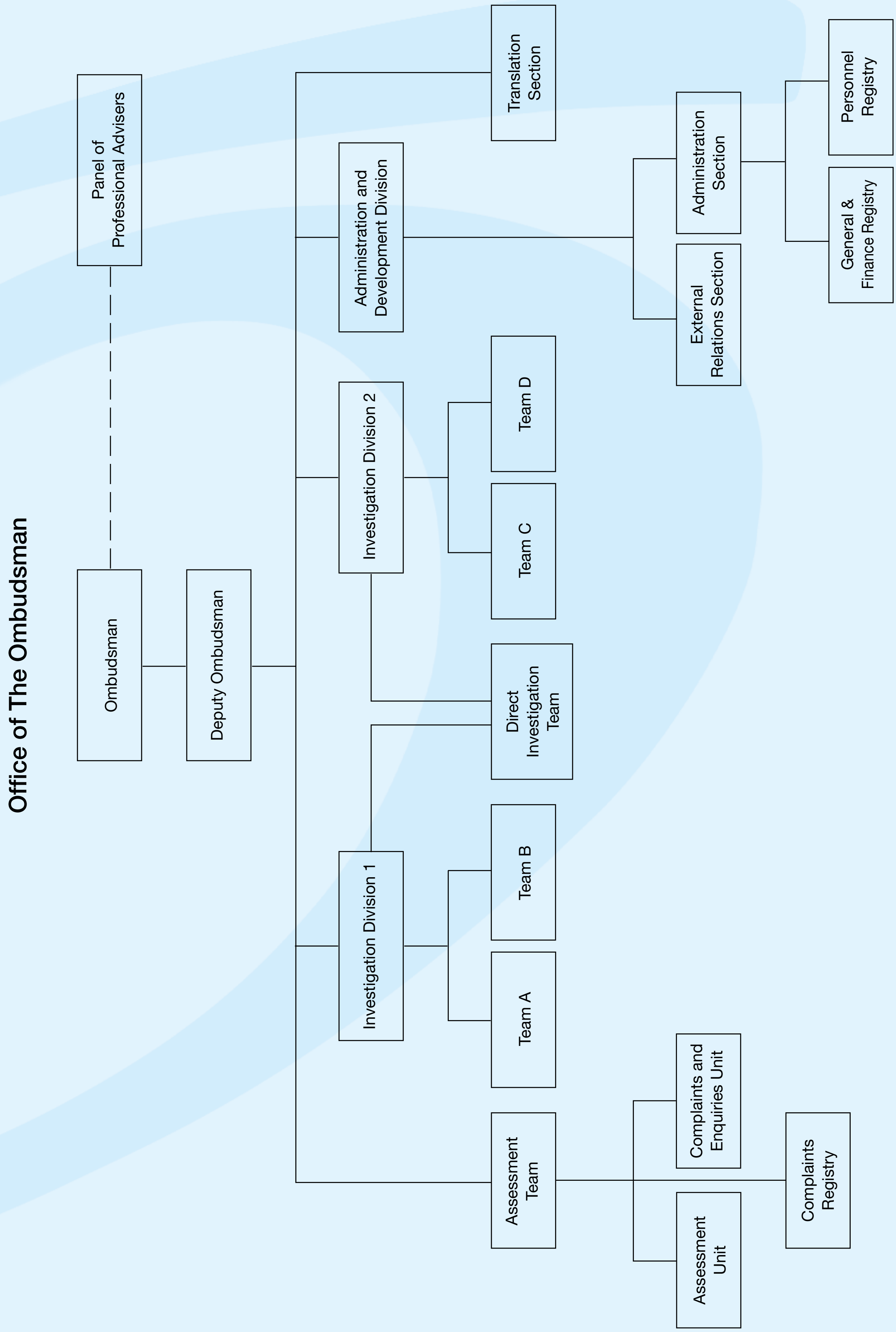
The Ombudsman's Final Remarks

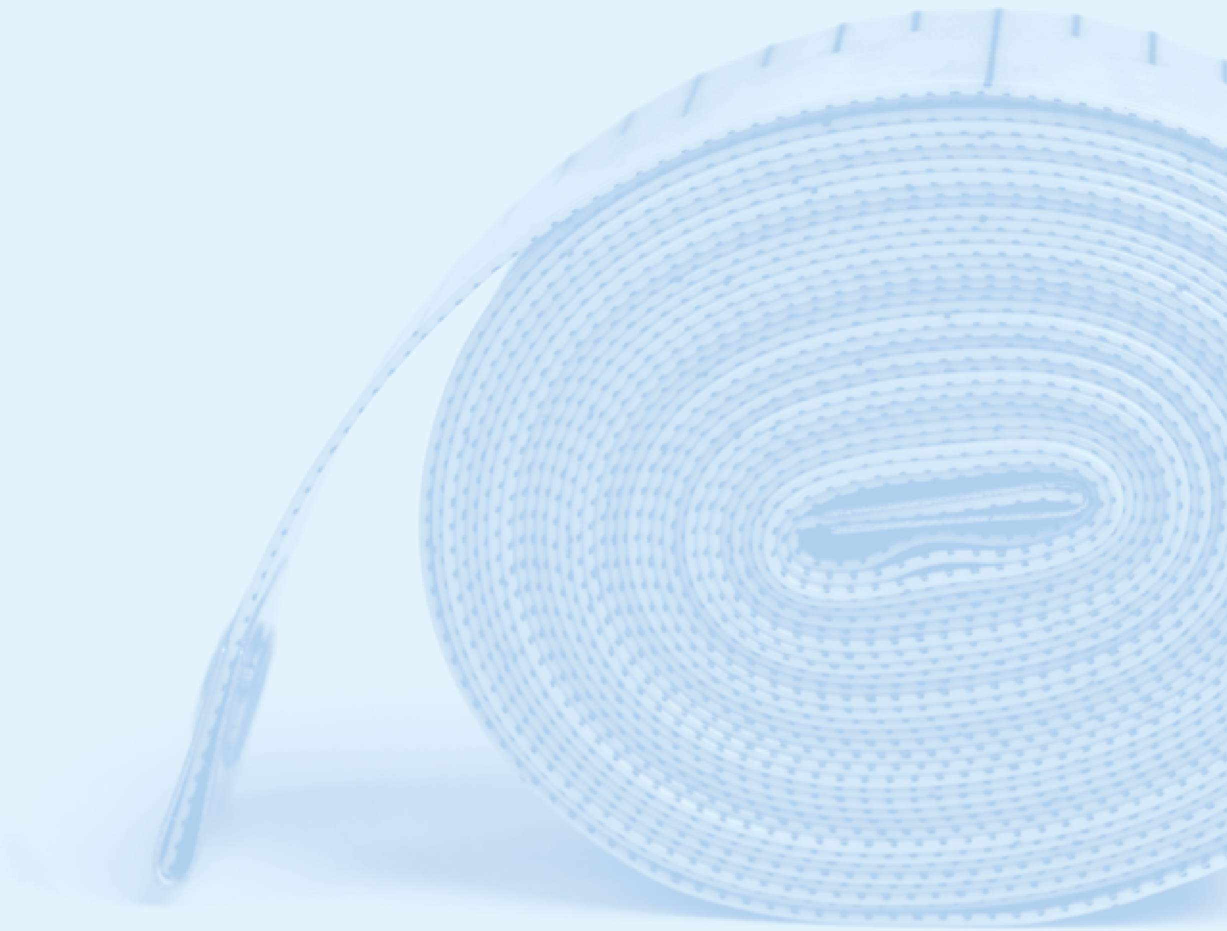
16. The focus of this complaint was procedural unfairness in the tender exercise. In this light, The Ombudsman considered VTC improper in seeking a supplementary quotation from Company K with substantial changes to its original bid. The Ombudsman urged VTC to consult GLD in revising its procurement guidelines.

A case of faulty procedures



Annex 18 Organisation Chart





Annex 19 Visits to the Office of The Ombudsman

Date	Visitors*
5.6.2006	Delegates from Hubei Provincial People's Government and the Central People's Government, China, organised by the Liaison Office of the Central People's Government in HKSAR
6.6.2006	Mr Shen Deyong, Vice President of the Supreme People's Court, China
21.6.2006	Mr Li Yufu, Vice Minister, Ministry of Supervision, China
17.7.2006	Mr Nikiforos Diamandouros, Ombudsman, The European Union
24.7.2006	Delegates from Jilin Provincial People's Government, China
11.8.2006	Participants of the Training Scheme in Common Law for Mainland Legal Officials (2005-2006), organised by the Department of Justice
5.9.2006	Delegates from Chongqing Municipal People's Government, China organised by the Liaison Office of the Central People Government in HKSAR
18.9.2006	Professor Christopher Forsyth, Director of the Centre for Public Law, University of Cambridge, United Kingdom
7.11.2006	Delegates from Dalian Municipal People's Government, China, organised by Global Modern Education (Group) Limited
8.11.2006	Delegates from Qinghai Provincial People's Government, China, organised by the Department of Justice
20-25.11.2006	Delegates from The Ministry of Supervision, China
14.12.2006	Delegates from Shengzhen Municipal People's Government, China, organised by the Independent Commission Against Corruption
22.3.2007	Mr Jiao Zhengzhong, Vice Governor of Jilin Province, China

*Excluding group visits from local schools and social service agencies

Table 1 Caseload

	Reporting year#				
	02/03	03/04	04/05	05/06	06/07
(A) Enquiries received	**14,298**	**12,552**	**11,742**	**14,633**	**15,626**
(B) Complaints received@	**4,382**	**4,661**	**4,654**	**4,266**	**5,606**
(C) Complaints brought forward	**760**	**772**	**1,088**	**719**	**676**
(D) Complaints for processing = (B) + (C)	**5,142**	**5,433**	**5,742**	**4,985**	**6,282**
(E) Complaints handled and concluded	**4,370**	**4,345**	**5,023**	**4,309**	**5,340**
By preliminary inquiries	**2,172**	**1,834**	**1,873**	**1,758**	**1,643**
By referral to complainee departments/ organisations for replies (INCH)	176	203	209	185	143
By rendering assistance/clarification (RAC)	1,996	1,631	1,664	1,573	1,500
By full investigation	**124**	**284**	**125**	**55**	**71**
– Withdrawn/Discontinued	2	6	0	2	0
– Substantiated	15	14	31	13	15
– Partially substantiated	39	24	46	14	16
– Unsubstantiated	68	236	45	26	39
– Incapable of determination	0	1	0	0	0
– Substantiated other than alleged	-	3	3	0	1
By mediation	**6**	**7**	**6**	**12**	**2(6)***
Complaints screened out	**1,729**	**1,892**	**1,948**	**1,113**	**2,385**
– Restrictions	971	1,259	1,132	351	394
– Outside jurisdiction	758	633	816	762	1,991
Complaints not pursued	**-**	**-**	**-**	**1,371**	**1,239**
– Discontinued	339	328	1,071	137	57
– Withdrawn				147	164
– Not undertaken@	-	-	-	1,087	1,018
(F) Percentage of complaints concluded = (E) ÷ (D)	**85%**	**80%**	**88%**	**86%**	**85%**
(G) Total cases carried forward = (D) - (E)	**772**	**1,088**	**719**	**676**	**942**
(H) Number of direct investigations completed	**6**	**5**	**5**	**4**	**4**
(I) Direct investigation assessment reports produced	**1**	**5**	**6**	**6**	**5**

\# Each reporting year is from 1 April to 31 March of the next year.

@ From 2006/07, excluding “Complaints to others copied to us”. Please refer to the “Glossary of Terms”.

* 6 cases attempted for mediation but not accepted by party(ies) concerned.

Table 2 Enquiries/Complaints Recieved



Enquiries received   Complaints received

* Figures exclude "complaints to other copied to us"

Table 3 Distribution Of Enquiries/Complaints

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(ACFD)	82	47
Airport Authority	(AA)	12	4
Architectural Services Department	(Arch SD)	26	20
Audit Commission	(Aud)	3	3
Auxiliary Medical Service	(AMS)	2	1
Buildings Department	(BD)	387	210
Census and Statistics Department	(C & SD)	13	7
Civil Aid Service	(CAS)	3	3
Civil Aviation Department	(CAD)	6	5
Civil Engineering and Development Department	(CEDD)	14	17
Companies Registry	(CR)	28	10
Correctional Services Department	(CSD)	39	179
Customs and Excise Department	(C&ED)	64	23
Department of Health	(DH)	87	43
Department of Justice	(D of J)	29	11
Drainage Services Department	(DSD)	38	24
Electrical and Mechanical Services Department	(E & MSD)	36	20
Employees Retraining Board	(ERB)	18	6
Environmental Protection Department	(EPD)	90	51
Equal Opportunities Commission	(EOC)	39	12
Fire Services Department	(FSD)	53	25
Food and Environmental Hygiene Department	(FEHD)	773	365
General Office of the Chief Executive's Office	(GOCEO)	1	7
Government Laboratory	(Govt Lab)	1	0
Government Logistics Department	(GLD)	3	7
Government Property Agency	(GPA)	9	6
GS - Chief Secretary for Administration's Office	(GS-CS)	20	20
GS - Civil Service Bureau	(GS-CSB)	12	5
GS - Commerce, Industry and Technology Bureau	(GS-CITB)	5	6
GS - Constitutional Affairs Bureau	(GS-CAB)	1	2
GS - Economic Development and Labour Bureau	(GS-EDLB)	5	5
GS - Education and Manpower Bureau	(GS-EMB)	181	78
GS - Environment, Transport and Works Bureau	(GS-ETWB)	4	8
GS - Financial Services and the Treasury Bureau	(GS-FSTB)	15	8
GS - Health, Welfare and Food Bureau	(GS-HWFB)	10	6
GS - Home Affairs Bureau	(GS-HAB)	6	6
GS - Housing, Planning and Lands Bureau	(GS-HPLB)	1	5
GS - Security Bureau	(GS-SB)	4	3
GS - Financial Secretary's Private Office	(GS-FSPO)	1	0
GS - Unclassified		1	0
Highways Department	(Hy D)	60	46
Home Affairs Department	(HAD)	169	103
Hong Kong Arts Development Council	(HKADC)	1	0
Hong Kong Examinations and Assessment Authority	(HKEAA)	38	22
Hong Kong Housing Authority	(HKHA)	31	15
Hong Kong Housing Society	(HKHS)	36	19

Table 3 Distribution Of Enquiries/Complaints

Organisation		Enquiries	Complaints
Hong Kong Monetary Authority	(HKMA)	23	12
Hong Kong Observatory	(HKO)	110	223
Hong Kong Sports Institute Limited	(HKSI)	2	0
Hospital Authority	(HA)	577	178
Housing Department	(HD)	1128	483
Immigration Department	(Imm D)	470	141
Information Services Department	(ISD)	2	5
Inland Revenue Department	(IRD)	146	83
Intellectual Property Department	(IPD)	15	6
Judiciary Administrator	(JA)	262	51
Kowloon-Canton Railway Corporation	(KCRC)	45	25
Labour Department	(LD)	224	72
Land Registry	(LR)	8	4
Lands Department	(Lands D)	368	225
Legal Aid Department	(LAD)	208	66
Legislative Council Secretariat	(LCS)	2	1
Leisure and Cultural Services Department	(LCSD)	225	127
Mandatory Provident Fund Schemes Authority	(MPFA)	77	19
Marine Department	(MD)	24	13
Office of the Telecommunications Authority	(OFTA)	46	26
Official Receiver's Office	(ORO)	67	17
Planning Department	(Plan D)	19	21
Post Office	(PO)	113	61
Privacy Commissioner for Personal Data	(PCO)	24	5
Radio Television Hong Kong	(RTHK)	8	3
Rating and Valuation Department	(RVD)	25	24
Registration and Electoral Office	(REO)	4	0
Securities and Futures Commission	(SFC)	24	22
Social Welfare Department	(SWD)	523	182
Student Financial Assistance Agency	(SFAA)	115	41
Television and Entertainment Licensing Authority	(TELA)	12	11
Trade and Industry Department	(TID)	10	4
Transport Department	(TD)	211	124
Treasury	(Try)	16	2
Urban Renewal Authority	(URA)	9	8
Vocational Training Council	(VTC)	20	12
Water Supplies Department	(WSD)	296	125
Total		**7,915**	**3,885**

Note 1. The total number of enquiries and complaints received in Table 1 are 15,626 and 5,606 respectively. They are different from the figures shown in Table 3 for the following reasons:

* An enquiry/complaint involving more than one organisation is shown against each of the organisation.

* Enquiries/complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Note 3. Excluding "Complaints to others copied to us" from 2006/07.

Table 4 Complaints* : Top Ten Organisations



* See Note 1 in Table 3

Table 5 Nature of Complaints

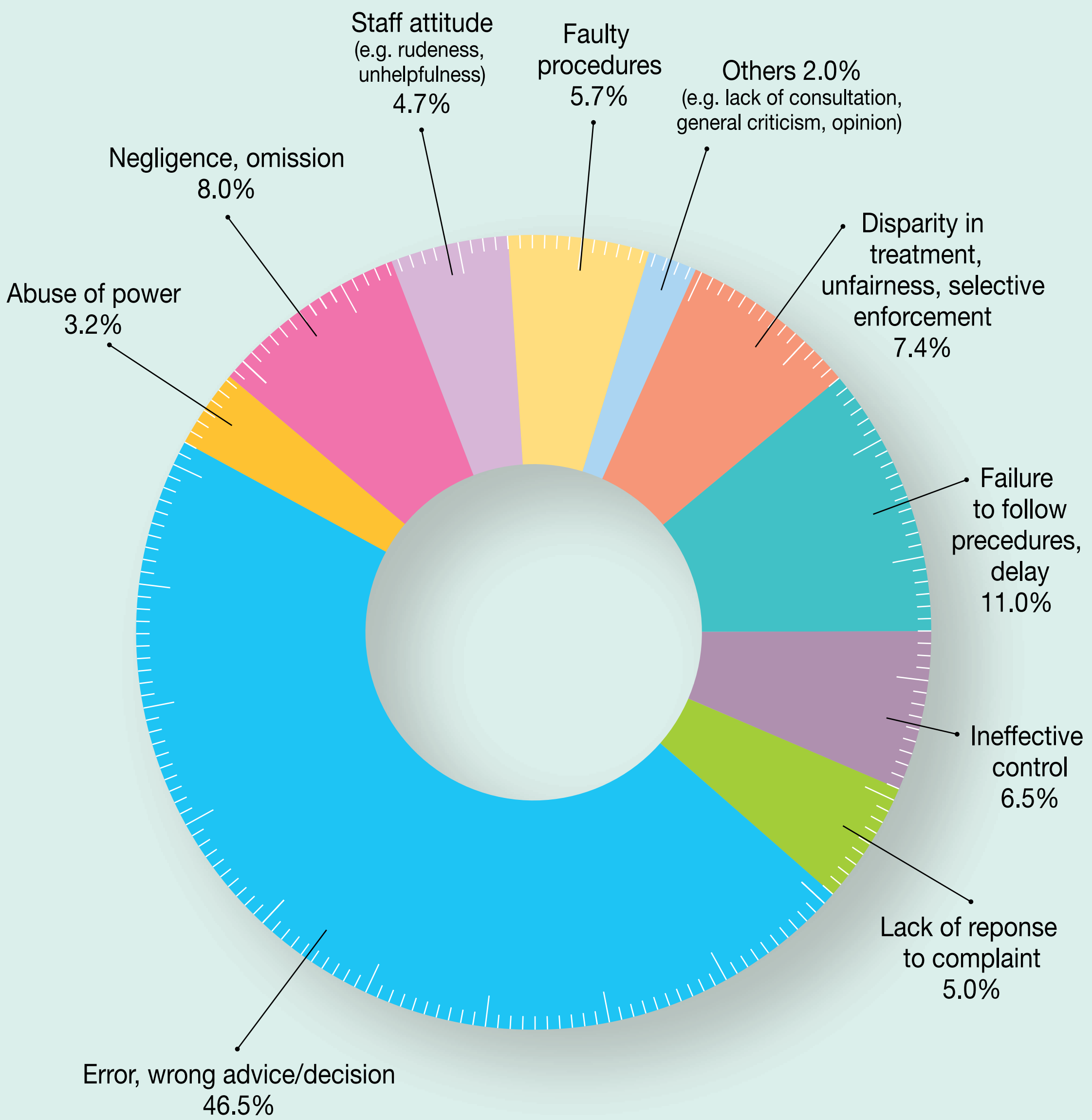


Table 6 Classification of Complaints Concluded: 5,340 Cases

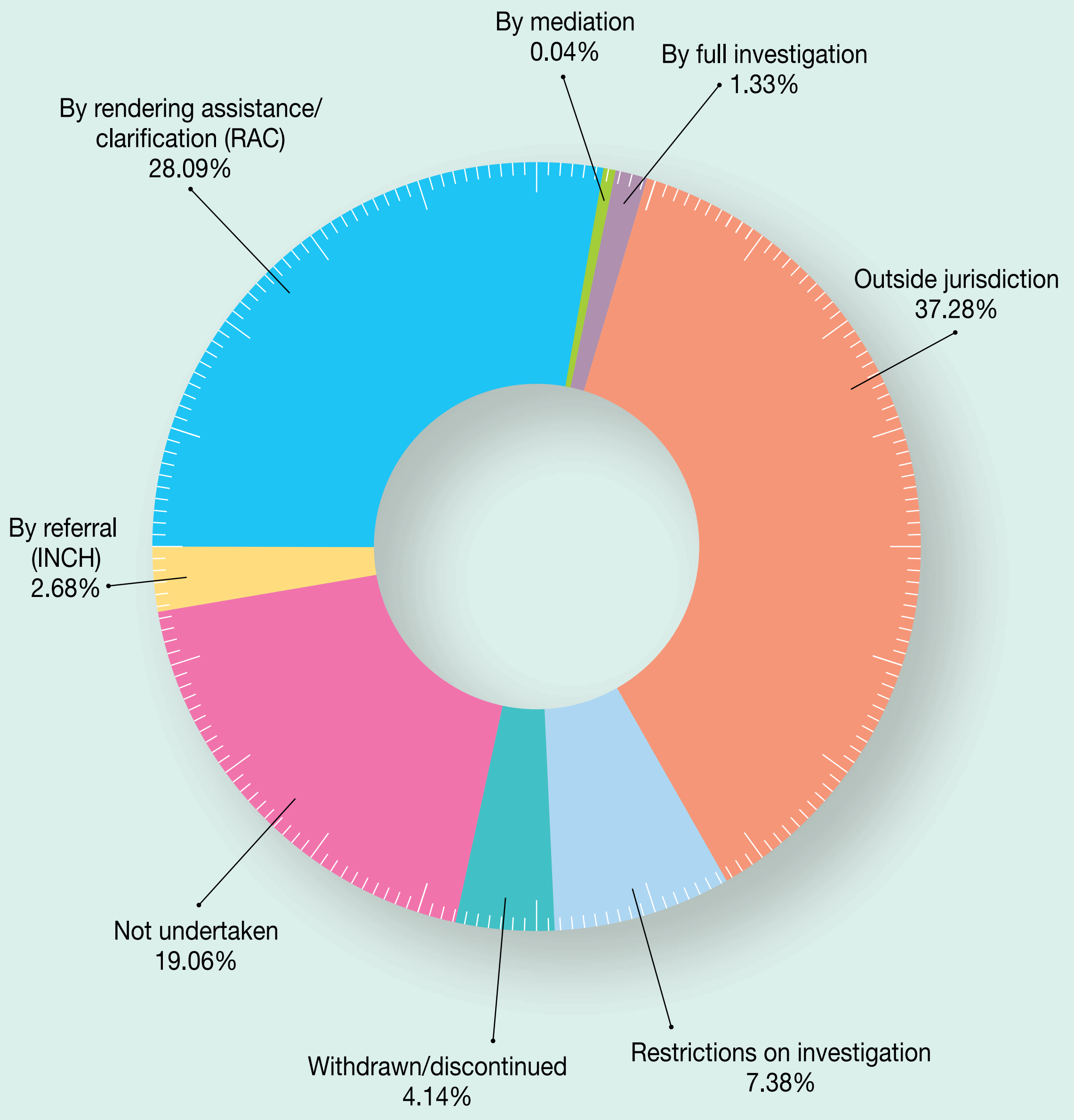


Table 7 Results of Complaints Concluded by Full Investigation : 71 Cases

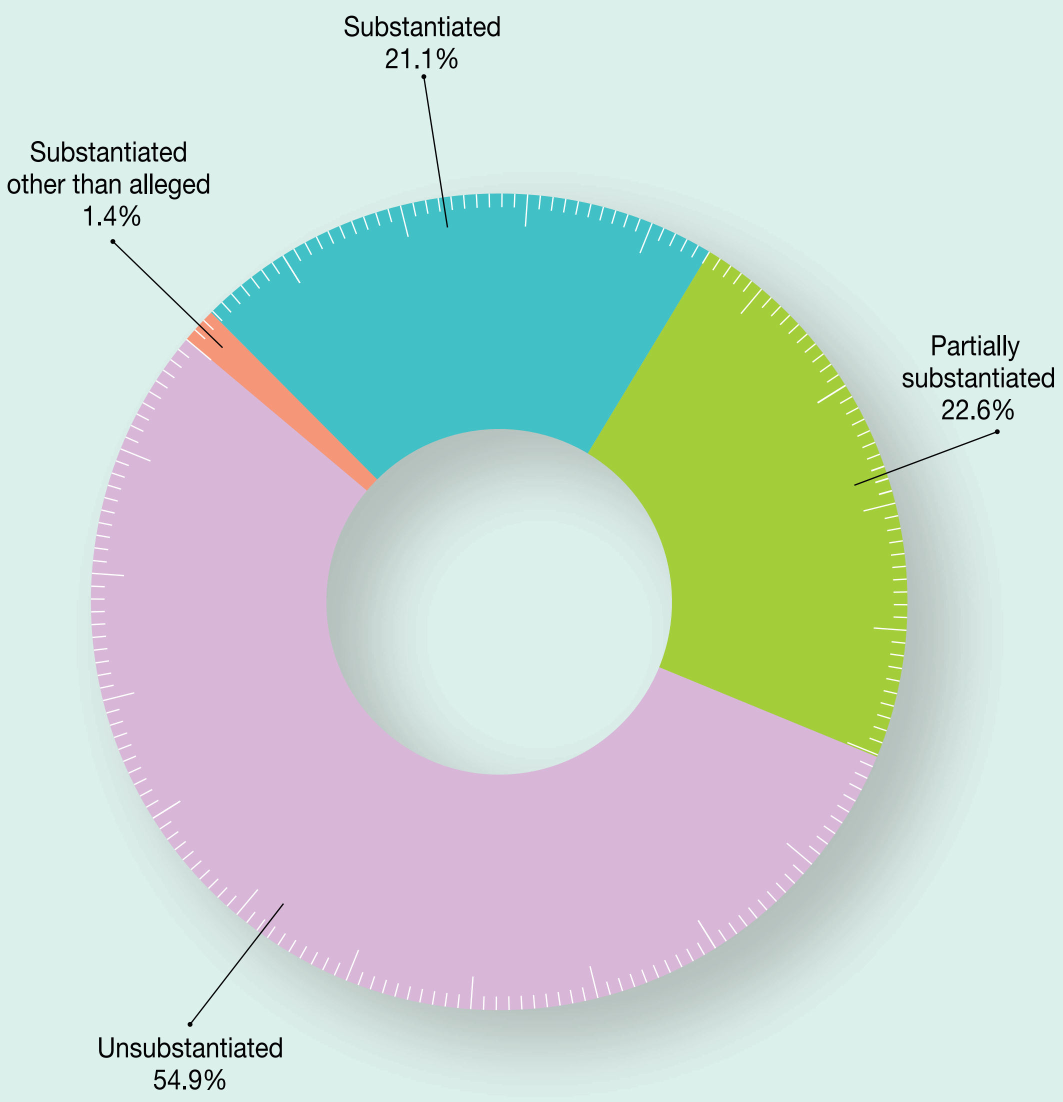


Table 8 Result of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/ suggested		No evidence of maladministration		Inconclusive		Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	17	3	(18%)	14	(82%)			6
Airport Authority	1			1	(100%)			
Architectural Services Department	2	1	(50%)	1	(50%)			1
Audit Commission	1			1	(100%)			
Buildings Department	98	22	(22%)	76	(78%)			17
Census and Statistics Department	3			3	(100%)			
Civil Aviation Department	4	1	(25%)	3	(75%)			1
Civil Engineering and Development Department	7	1	(14%)	6	(86%)			
Companies Registry	1			1	(100%)			
Correctional Services Department	42	4	(10%)	37	(88%)	1	(2%)	6
Customs and Excise Department	1	1	(100%)					
Department of Health	8	2	(25%)	5	(62.5%)	1	(12.5%)	
Department of Justice	2			2	(100%)			
Drainage Services Department	8	2	(25%)	6	(75%)			
Electrical and Mechanical Services Department	9	1	(11%)	8	(89%)			2
Employees Retraining Board	2			2	(100%)			
Environmental Protection Department	21	3	(14%)	18	(86%)			3
Equal Opportunities Commission	1	1	(100%)					
Fire Services Department	4	1	(25%)	3	(75%)			3
Food and Environmental Hygiene Department	137	38	(28%)	99	(72%)			55
General Office of the Chief Executive's Office	1	1	(100%)					
Government Logistics Department	1	1	(100%)					
Government Property Agency	2			2	(100%)			
Government Secretariat								
- Chief Secretary for Administration's Office	9	3	(33%)	6	(67%)			
- Commerce, Industry and Technology Bureau	2			2	(100%)			
- Constitutional Affairs Bureau	1	1	(100%)					
- Economic Development and Labour Bureau	2			2	(100%)			
- Education and Manpower Bureau	26	3	(12%)	23	(88%)			5
- Environment, Transport and Works Bureau	8			7	(87.5%)	1	(12.5%)	
- Financial Services and theTreasury Bureau	2			2	(100%)			
- Health, Welfare and Food Bureau	2	1	(50%)	1	(50%)			
- Home Affairs Bureau	3	1	(33%)	2	(67%)			
- Housing, Planning and Lands Bureau	2			2	(100%)			1
Highways Department	19	1	(5%)	18	(95%)			1
Home Affairs Department	50	14	(28%)	36	(72%)			7
Hong Kong Examinations and Assessment Authority	4	2	(50%)	2	(50%)			3

Table 8 Result of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/ suggested		No evidence of maladministration		Inconclusive		Ombudsman's suggestions on systemic improvement
Hong Kong Housing Authority	6	2	(33%)	4	(67%)			
Hong Kong Housing Society	6	1	(16.7%)	4	(66.6%)	1	(16.7%)	1
Hong Kong Monetary Authority	2			2	(100%)			
Hong Kong Observatory	220	1	(0.45%)	219	(99.55%)			2
Hospital Authority	52	9	(17%)	43	(83%)			4
Housing Department	199	37	(18.6%)	159	(79.9%)	3	(1.5%)	18
Immigration Department	35	9	(26%)	26	(74%)			2
Information Services Department	2			2	(100%)			
Inland Revenue Department	22	4	(18%)	18	(82%)			
Intellectual Property Department	1			1	(100%)			
Judiciary Administrator	12	4	(33%)	8	(67%)			1
Kowloon-Canton Railway Corporation	12			11	(92%)	1	(8%)	2
Labour Department	24			23	(96%)	1	(4%)	
Land Registry	2			2	(100%)			2
Lands Department	90	27	(30%)	62	(69%)	1	(1%)	23
Legal Aid Department	10			10	(100%)			
Leisure and Cultural Services Department	45	15	(33%)	30	(67%)			12
Mandatory Provident Fund Schemes Authority	3	1	(33%)	2	(67%)			1
Marine Department	5			5	(100%)			
Not Specified	3			3	(100%)			
Office of the Telecommunications Authority	7	3	(43%)	4	(57%)			1
Official Receiver's Office	9	1	(11%)	8	(89%)			2
Planning Department	8			8	(100%)			1
Post Office	17	9	(52.9%)	8	(47.1%)			11
Privacy Commissioner for Personal Data	1			1	(100%)			
Radio Television Hong Kong	1			1	(100%)			
Rating and Valuation Department	7	1	(14.3%)	5	(71.4%)	1	(14.3%)	
Securities and Futures Commission	6	1	(17%)	5	(83%)			1
Social Welfare Department	58	7	(12%)	50	(86%)	1	(2%)	2
Student Financial Assistance Agency	17	5	(29%)	12	(71%)			1
Television and Entertainment Licensing Authority	4	1	(25%)	3	(75%)			2
Trade and Industry Department	1			1	(100%)			
Transport Department	44	7	(16%)	37	(84%)			6
Urban Renewal Authority	3			3	(100%)			
Vocational Training Council	2	1	(50%)	1	(50%)			
Water Supplies Department	61	22	(36%)	39	(64%)			2
Total	**1,500**	**277**		**1,211**		**12**		**208**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/Clarification are not shown.

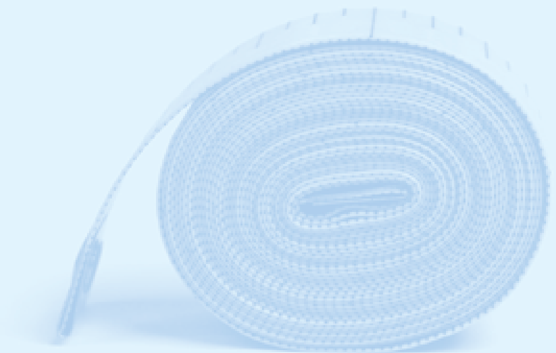
Table 9 Processing Time of Complaints Concluded

Processing Time of Complaints Concluded

YEAR / TIME	02/03	03/04	04/05	05/06	06/07
Less than 1 month	59.2%	56.4%	52.8%	56.4%	**64.7%**
1 - 3 months	15.1%	14.8%	12.5%	15.4%	**11.6%**
3 - 6 months	24.0%	27.0%	32.9%	26.2%	**22.3%**
6 - 9 months	0.9%	1.0%	1.0.%	1.3%	**0.8%**
9 - 12 months	0.3%	0.4%	0.6%	0.3%	**0.5%**
More than 12 months	0.5%	0.4%	0.2%	0.4%	**0.1%**
Total	**4,370**	**4,345**	**5,023**	**4,309**	**5,340**

Processing Time for Complaints Concluded by Full Investigated and Other Modes

YEAR / TIME	02/03	03/04	04/05	05/06	06/07
Concluded by full investigation					
Less than 3 months	0.8%	37.7%	0.8%	3.6%	**0.0%**
3 - 6 months	56.5%	45.4%	36.8%	23.7%	**36.6%**
6 - 9 months	14.5%	8.4%	28.8%	32.7%	**22.5%**
9 - 12 months	9.7%	3.9%	24.8%	21.8%	**32.4%**
More than 12 months	18.5%	4.6%	8.8%	18.2%	**8.5%**
Number of complaints	**124**	**284**	**125**	**55**	**71**
Concluded by other modes					
Less than 1 month	60.9%	60.3%	54.1%	57.1%	**65.6%**
1 - 3 months	15.5%	13.2%	12.8%	15.6%	**11.7%**
3 - 6 months	23.1%	25.7%	32.8%	26.3%	**22.1%**
6 - 9 months	0.4%	0.5%	0.3%	0.9%	**0.5%**
9 - 12 months	0.1%	0.2%	0.0%	0.0%	**0.1%**
More than 12 months	0.0%	0.1%	0.0%	0.1%	**0.0%**
Number of complaints	**4,246**	**4,061**	**4,898**	**4,254**	**5,269**



The Ombudsman monitors public administration systems and procedures for fair, efficient and reasonable practices.

OMBUDSMAN
申訴專員

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